

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BRIGHT RESPONSE, LLC * Civil Docket No.
 * 2:07-CV-371
VS. * Marshall, Texas
 *
 * August 4, 2010
GOOGLE, INC., ET AL * 8:30 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM
UNITED STATES MAGISTRATE JUDGE

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12 * * * * *

13 P R O C E E D I N G S

14 (Jury in.)

15 THE COURT: All right. Please be seated.
16 Good morning, Ladies and Gentlemen.

17 I think we may have gotten the air
18 conditioning fixed, but we'll see. It's early yet, so
19 no promises.

20 Couple of preliminary matters. I'm going
21 to give you some -- quite a few final instructions at
22 the end of the case, some of which will talk about the
23 difference between literal infringement and infringement
24 under the Doctrine of Equivalents.

25 But just for present purposes, literal
infringement of a patent claim requires that the accused
products or systems meet each of the claim limitations

1 exactly as they're found in the claims and as they've
2 been construed by the Court.

3 Infringement under the Doctrine of
4 Equivalents occurs when a claim limitation, although
5 it's not met exactly, may be insubstantially different
6 from what's found in the claim as construed by the
7 Court.

8 Now, yesterday you heard some testimony
9 from Dr. Rhyne concerning infringement, both literally
10 and under the Doctrine of Equivalents of Claim 33
11 insofar as Claim 33 was asserted against the Defendant
12 Google's accused products.

13 Now, for procedural reasons, I need to
14 ask you to disregard Dr. Rhyne's opinion on literal
15 infringement as to Claim 33, but you may still and are
16 entitled to consider fully his opinions concerning
17 infringement of Claim 33 under the Doctrine of
18 Equivalents.

19 With that, Mr. Fenster, you may proceed.

20 MR. FENSTER: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. FENSTER: And, Your Honor, can we
23 just clarify that the instruction applies only with
24 respect to his testimony with respect to Claim 33?

25 THE COURT: That's correct.

1 MR. FENSTER: Thank you very much.

2 THE COURT: Of course.

3 MR. FENSTER: Good morning, Ladies and
4 Gentlemen.

5 VERNON THOMAS RHYNE, III, Ph.D., PLAINTIFF'S WITNESS,

6 PREVIOUSLY SWORN

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. FENSTER:

9 Q. Good morning, Dr. Rhyne.

10 A. Good morning.

11 Q. We were -- we had just started yesterday with
12 the evidence of Yahoo!'s Sponsored Search. Today I
13 promise we'll go much faster. We don't have to go
14 through the claim language and claim constructions that
15 we did yesterday. We've already laid a lot of the
16 foundation for today's testimony.

17 MR. FENSTER: So with that, if we can
18 bring up Dr. Rhyne's Slide 108, please.

19 Q. (By Mr. Fenster) Dr. Rhyne, can you just give
20 us a recap briefly, first, what is the accused product
21 from Yahoo! that you're -- that you're opining on?

22 A. It's called Sponsored Search. It's the
23 product that when someone sends a search request to
24 Yahoo!, they get back both the results of the search and
25 certain advertisements that are matched to their search.

1 Q. And did -- can you just give us a recap of the
2 first two elements and your findings with respect to
3 Sponsored Search just to bring us up to speed.

4 A. Okay. I think we covered yesterday that it's
5 my finding that that Sponsored Search is a method for
6 automatically processing a non-interactive electronic
7 message using a computer, using the Court's construction
8 of the term non-interactive electronic message, and that
9 it is a part of the Yahoo! system called the Yahoo!
10 front end that receives that electronic message from a
11 source, such as a human sitting there typing at their
12 computer, and when they hit search, off goes the message
13 to Yahoo! Sponsored Search system.

14 Q. And, Dr. Rhyne, have you made any findings
15 with respect to whether Sponsored Search meets Claim
16 Element 26(b)?

17 A. (b)? Yes, I have.

18 Q. And what did you find?

19 A. I found that they do interpret the electronic
20 message using a rule-based and a case-based knowledge
21 engine.

22 Q. Okay.

23 MR. FENSTER: Briefly, Slide 109.

24 Q. (By Mr. Fenster) We went through yesterday --
25 yesterday that the claim construction of a rule-based

1 knowledge engine and a case-based knowledge engine.

2 And, Dr. Rhyne, did you apply the Court's
3 claim construction with respect to your analysis of
4 Yahoo! Sponsored Search as well?

5 A. Yes, I did.

6 Q. And did you find a rule-based knowledge engine
7 in Sponsored Search?

8 A. Yes.

9 MR. FENSTER: Let's go to Slide 110.

10 Q. (By Mr. Fenster) So what is -- can you tell us
11 some of the evidence that you found that meets 26(b)?

12 A. This was some descriptive information from a
13 Yahoo! document. You can see down at the bottom here
14 there's the Yahoo! -- okay. There's the Yahoo!
15 information.

16 And it was interesting that they actually used
17 the word rules in describing this pre-processing that
18 they do to kind of clean up the query, the keywords in
19 the query.

20 And they do things like they have a lowercase
21 converter that has a rule that says if I search along
22 the query and I see an uppercase character, just to
23 clean it up, they're going to make it lowercase.
24 They're going to take the capitals out. They're going
25 to have a punctuation stripper that if it sees -- the

1 rule there would be if I see a piece of punctuation that
2 is meaningless to the claim -- to the query, then they
3 will remove it.

4 They remove prefixes that have, as it says
5 here, little semantic value, like show me or how can I,
6 and these other things.

7 They strip noise words. Google calls those
8 stop words, but words that add little value to the
9 process.

10 And then Yahoo! takes the step of
11 re-sequencing all the keywords in the search in
12 alphabetical order. That's something they do that I
13 don't believe that Google does, but it's just another
14 part of cleaning up the query keywords before they're
15 going to pass them on into the rest of their Sponsored
16 Search system.

17 Q. And which part of claim element 26(b) is this
18 evidence that Yahoo! Sponsored Search meets?

19 A. This is a rule-based knowledge engine that
20 uses rules like, if it's uppercase, make it lowercase,
21 if then. That's what it does.

22 Q. Okay. And if we can go to your next slide,
23 No. 111, please.

24 What did -- what does this evidence show?

25 A. Well, from the same document, they actually

1 had an example of how these things worked. And it
2 started with someone who entered a fairly lengthy query,
3 all DVDs -- show me all DVDs featuring Paul Newman.
4 And then they went through -- you can see the lowercase
5 converter got rid of the capital DVD and the capitals in
6 Paul Newman. They got rid of the punctuation, like the
7 colon, okay? They stripped out phrases that were not
8 important, like show me. They swapped the words around.
9 They cleaned up some phrases, got rid of the noise
10 words, like all, and finally put them in alphabetical
11 order.

12 So what the Sponsored Search system actually
13 will see is the four keywords: DVD featuring Newman
14 Paul.

15 Q. Okay.

16 MR. FENSTER: And this is from Exhibit --
17 Plaintiff's Exhibit 937 for the record.

18 Q. (By Mr. Fenster) So just to summarize with
19 Slide 112, does Yahoo! have a rule-based knowledge
20 engine as the Court has construed it?

21 A. It does. And here are some examples just
22 couched as rules. If I see a plural word, change it
23 singular, et cetera. If I see a noise word, like all,
24 then take it out.

25 Q. And did you find any evidence from the

1 deposition testimony of Yahoo!'s own engineers that
2 supported your conclusion that 26(b) rule-based
3 knowledge engine was met?

4 A. Yes, I did. From Mr. Kolm's deposition,
5 here's a segment of that. He was asked the following
6 question: Do you know how those rules are implemented,
7 for example, how the rules for lowercase converter are
8 implemented?

9 He said: Yeah. The different rules are
10 implemented in slightly different ways. That particular
11 one just walks through the characters of the string, and
12 if it is an uppercase character, it changes it to a
13 lowercase character.

14 And at another point in his deposition, he was
15 asked: Okay. And what information about the query is
16 compared to the attributes of the ad?

17 And his answer was: At a high level, any
18 information about the query we have. So we can look at
19 the query and look at it at a character basis, how often
20 the character shows up. We can look at it on a word
21 basis. We can identify words that are phrases that
22 belong together.

23 Q. Okay. And so did you find, based on all the
24 evidence that you reviewed, that Yahoo! has a rule-based
25 knowledge engine?

1 A. Yes, I did.

2 Q. Now, what about the second part of 26(b), the
3 case-based knowledge engine?

4 A. I did. And if you remember, the Court's
5 construction says it was a knowledge engine that
6 compares to exemplary cases. And an excellent example
7 of an exemplary case would be a keyword entered by an
8 advertiser sort of like hoping that's going to be a
9 query keyword at some point in the future.

10 And I found some evidence that that takes
11 place as well.

12 Q. Okay. Now, Dr. Rhyne, remember with doc --
13 with Google, you walked us through where you had entered
14 an ad and the advertiser interface for Google told you
15 to provide information that you might expect to see in a
16 query?

17 A. Yes.

18 Q. Did you find anything similar with respect to
19 Yahoo!

20 A. Yes. I mentioned that I went through two
21 detailed videos that Yahoo! provides on the internet
22 showing potential advertisers how you create
23 advertisements and enter them into the Yahoo! system.

24 And there is a point in the Yahoo!
25 advertisement interface, much like the one for Google,

1 where you are prompted to enter keywords that will go
2 along with your ad. And those, again, are words that
3 you hope some future searching individual will enter,
4 and as a result, you can show your ad to them and have a
5 likelihood that they will be interested in your product.

6 Q. And does the Yahoo! advertiser interface allow
7 the advertiser to add any other information besides
8 keywords that they might expect the user to search on?

9 A. Yes. You can select territory. You can make
10 other types of restrictions as to the types of queries
11 that are received that you would want your ad to either
12 be shown or not to be shown.

13 Q. And does Yahoo! also extract or derive other
14 information from the ad that it expects --

15 A. Yes.

16 Q. -- to be in the user search request?

17 A. There are cases where it looks at words in the
18 ad itself to try to find out is there likely to be a
19 match between what's called a creative part of the ad
20 and the query.

21 Q. And did you find, Dr. Rhyne, that Yahoo!'s
22 Sponsored Search compares text and attributes from the
23 search request with an exemplar case?

24 A. Yes.

25 Q. And tell us about that and where does that

1 happen.

2 A. Well, if we can go to, I believe, it's 114.
3 This is taken from a Yahoo! document, and they were
4 giving examples of how they do matches between queries
5 and advertisements. And the text says, if the bidded
6 term -- that's a keyword that the advertiser said they
7 would like to have associated with their ad --

8 Q. Let me stop you right there, just to clarify.
9 So the bidded term, that's the keyword that the
10 advertiser enters that they think the user might search
11 on?

12 A. Yes. That's Yahoo!--speak for what I
13 previously have called a keyword associated with the ad.

14 Q. Thank you. I'm sorry to interrupt. Go ahead.

15 A. No problem.

16 They say if the bidded term is diamond ring
17 and the query that's been entered is diamond engagement
18 ring, that would be a match based on what they do in
19 their comparison software, because keywords from the
20 bidded term are present somewhere in the query.

21 So they've got a fairly smart comparison
22 system that can recognize that diamond ring is very much
23 like diamond engagement ring.

24 Q. Okay. And did you find other evidence showing
25 that Yahoo! Sponsored Search has a case-based knowledge

1 engine required in 26(b)?

2 A. I did. And I pulled out of what is
3 essentially a little older Yahoo! document. There's
4 some aspects of the next picture that I believe you have
5 on 115.

6 For example, over here on this side, it says
7 Live Search database. It's my understanding that that
8 has now been replaced by this thing that they call
9 Elcaro now.

10 But I was -- the purpose of bringing this in
11 in a slide is to look at this middle area. This is
12 something Yahoo! uses to try to find an initial set of
13 advertisements. They call it a result test.

14 And a good example is Exact Match. That's a
15 piece of software that says, is there an exact match
16 between the keywords in the query and the bidded
17 keywords or terms that have been identified by the
18 advertiser?

19 Q. Okay. So let me stop you right there.

20 So Exact Match is comparing two things:
21 Something from the query. And what was that?

22 A. The keywords in the query.

23 Q. Okay.

24 A. Like pizza.

25 Q. Okay. And are -- the keywords of the query,

1 are those attributes to the query?

2 A. The keywords of the query are text of the
3 query, is the way I look at it.

4 Q. Okay.

5 A. Attributes would be something like the
6 geographic location that came in as part of that http
7 message. It's additional information.

8 Q. So those keywords from the query were compared
9 to what in the ad -- from the ad?

10 A. What Yahoo! calls the bidded keywords, the
11 keywords that the advertiser entered and said I hope
12 this is something somebody will search on, and if they
13 do, they would probably like to see my ad.

14 Q. Now, are there other comparisons in the Yahoo!
15 Sponsored Search, other than Exact Match, that satisfy
16 the case-based knowledge engine requirement?

17 A. Yes. There are some other things. We talked
18 just briefly about King Kong. There's a newer version
19 of King Kong called Yellowstone.

20 There's this Q-U-A-D, Quad system, all of
21 which use the information in the database where it says
22 the ad -- here's where the ad listings are. It's got --
23 let me reset that.

24 They've got bidded terms. They've got
25 markets, titles, descriptions, other things. And you

1 can see the flow here. They come over and look, and
2 then they bring back the matching ad listings. And,
3 ultimately, after they select that result set, they come
4 over here. That result set is then processed by the
5 part of the Sponsored Search system called the Affiliate
6 Server.

7 And it then also does comparisons and matching
8 to try to rank the ads that are in the result set so as
9 to get the best of those ads to send back to the
10 querying source.

11 Q. Okay. Now, when we go through --

12 MR. ROOKLIDGE: Objection, report.

13 THE COURT: Approach.

14 (Bench conference.)

15 THE COURT: Okay. What's the objection?

16 MR. ROOKLIDGE: The objection is that he
17 didn't identify the Affiliate Server as one -- in his
18 report as one of the structures that provided the
19 case-based knowledge engine.

20 He talked about Exact Match, QBERT, King
21 Kong, Yellowstone, Quad, but he did not talk about the
22 Affiliate Server, so he's going beyond his report.

23 THE COURT: All right. What's the
24 response?

25 MR. FENSTER: Your Honor, what is accused

1 in his report is the Sponsored Search engine. He
2 describes that the comparisons take place in King Kong,
3 Quad, Yellowstone, and that the scoring that takes place
4 in 30 -- for Claim 30(b6) occurs in the Affiliate
5 Server.

6 It's all lumped -- it's altogether as one
7 accused device, the Sponsored Search.

8 THE COURT: Okay. Where does he
9 reference the Affiliate Server in his report?

10 MR. FENSTER: In connection with
11 Claim 30. Affiliate Server produces the case models in
12 order to process incoming electronic messages. This is
13 at Paragraph 100 of his report.

14 (Bench conference concluded.)

15 Q. (By Mr. Fenster) So, Dr. Rhyne, did you find
16 that Yahoo! Sponsored Search meets the case-based
17 knowledge engine?

18 A. Yes.

19 Q. Okay. And did you find that Yahoo! Sponsored
20 Search meets both the rule-based and case-based
21 knowledge engine requirements of 26(b)?

22 A. Yes, I did.

23 Q. Now, we'll hear more in Claim 30 about the
24 case model aspect.

25 And does the evidence that we'll review with

1 respect to Claim 30 also support your findings with
2 respect to Sponsored Search meeting 26(b)?

3 A. In that claim, because it had those six parts,
4 I go into much more detail about how the -- the
5 case-base comparisons of text and attributes and scoring
6 take place.

7 Q. Okay. And so may we check off that Yahoo!
8 Sponsored Search infringes Claim 26 -- or it meets the
9 elements of 26(b)?

10 A. I was going to correct you. I'm not asserting
11 infringement of Claim 26, but I have found that the
12 limitations of 26(b) are met in Yahoo! Sponsored Search.

13 Q. That's right. And that's -- and we're going
14 through these prerequisites, because they are dependent
15 claims that are not asserted?

16 A. Yes, sir.

17 Q. All right.

18 MR. FENSTER: So 116, please.

19 Q. (By Mr. Fenster) Now, before we go on to
20 26(c), the Court's claim construction says that the
21 steps of 26(a), (b), and (c) have to be done in order.

22 Now, does Yahoo! Sponsored Search meet that
23 limitation?

24 A. Yes, they do. They have interpreted the
25 electronic message both using the rule base to clean up

1 the query and the case-based knowledge engine to select
2 the appropriate queries.

3 And it's not until the very end of that
4 process, when they have the actual number of ads that
5 they're going to return, that they do a retrieval of one
6 or more of those ads corresponding to the interpretation
7 of the message from a repository for automatic delivery.
8 And they do that at the end of the process. So the
9 ordering is met.

10 Q. Okay. So now, let's go to Claim
11 Element 26(c).

12 Is 26(c) met by Sponsored Search?

13 A. Yes, it is.

14 Q. And can you -- so as a reminder, this requires
15 retrieving one or more predetermined responses
16 corresponding to the interpretation of the electronic
17 message, retrieving those from a repository for
18 automatic delivery to the source?

19 A. Yes.

20 Q. All right. So can you tell us how that's met?

21 A. Well, I've used the Court's construction of
22 both predetermined response and repository. And it's
23 met. And if we go to 118, I've pulled together some --
24 some of the evidence that I cited in my report.

25 At the top is a deposition statement by

1 Mr. Kannan. The question: Where would that be done,
2 then? What part of the system?

3 And he said: In Elcaro. It's -- it's a
4 place; it's a system called Elcaro, which is a
5 repository of the ads.

6 He actually used the word repository.

7 And then here, you can see on the right-hand
8 side of this system diagram, in the middle is that
9 Affiliate Server, okay?

10 And on the right-hand side is the Elcaro
11 system where the individual ads, which are, I believe,
12 to be one or more predetermined responses, each separate
13 ad, are held in that database. And they are pulled from
14 that as part of a couple of steps.

15 When they're finding matching ads, there's
16 some use of that database. And then later when they're
17 doing the last part of the process where they rank
18 price, filter, and determine placement, that's where
19 they do some additional pulling of the ads finally for
20 the purpose of sending them back to the Yahoo! front end
21 for the purpose of letting the searching person see
22 those advertisements along with their search results.

23 Q. Okay. So, Dr. Rhyne, if we can go back to
24 your slide, 104. And this was your example of the
25 search on Texas Rangers, I believe.

1 Now, can you tell us where the predetermined
2 responses are on this slide?

3 A. Each one of these little box points is an
4 individual predetermined response. And when they pull
5 say the first one, the very top one -- or there's
6 another one over here that's a sponsored result.

7 Each of those is a predetermined response,
8 which is part of the Sponsored Search system, is
9 retrieved from Elcaro for the purpose of sending them
10 back to this screen in response to the search on Texas
11 Rangers.

12 Q. Okay. Now, the Court's claim construction
13 requires that there be a predetermined response. It has
14 to have been prepared before receipt of the electronic
15 message?

16 A. Yes.

17 Q. So that's before -- that's before Yahoo!
18 receives the http search request?

19 A. Yes.

20 Q. Okay. Now, where did each of these
21 database -- I'm sorry -- where did each of these ads
22 come from?

23 A. The Elcaro database where they were entered.
24 For example, this first one is from a ticket reseller
25 called StubHub!. They sat down and created that

1 advertisement using the Yahoo! advertiser interface. A
2 first line, a second line, et cetera. They put in
3 this -- it's called a URL -- this StubHub.com.

4 And they put that in maybe months ago or last
5 night, but they did that before the search came in.
6 Otherwise, their ad would not have been in the Elcaro
7 database to be returned for this search.

8 Q. Now, Dr. Rhyne, does this ad, or any ad, have
9 to be in the database already before it can be retrieved
10 and served on the search results page?

11 A. Yes.

12 Q. Now, you've read the report of Dr. Allan, who
13 is Yahoo!'s expert?

14 A. I haven't studied it in detail yet. I expect
15 I will, but I've read it at least once.

16 Q. Okay. And are you aware that he makes a -- he
17 makes an argument that the ads that Yahoo! serves are
18 not predetermined, because they're always being updated?

19 A. He said something like maybe during that
20 fraction of a second that -- between when I enter Texas
21 Rangers and click search and these ads appear on my
22 screen with the search results that somebody may have
23 entered a new ad.

24 I mean, I can't tell you that's impossible,
25 but I believe every one of these five ads were resident

1 in the Elcaro database before that search took place.

2 Q. Now, what -- what's the approximate time
3 period between the time that Yahoo! receives the http
4 request and the time that it serves these ads?

5 A. A fractional part of a second, something like
6 two-tenths to a half of a second at the top.

7 Q. And do you think it's likely, Dr. Rhyne, that
8 someone entering or making changes at the advertiser
9 side of the Yahoo! interface would be making a change in
10 that split fraction of a second that would result in an
11 ad here?

12 THE COURT: Excuse me just a second.

13 MR. ROOKLIDGE: Objection, report.

14 THE COURT: Overruled.

15 A. I think it's unlikely. But frankly, even if
16 that happened, it wouldn't affect my infringement
17 position, because let's say that there was just this --
18 this first ad happened to come in during that fraction
19 of a second. Then I would look to the second ad that
20 was in there last night as infringing the claim, so...

21 Q. (By Mr. Fenster) Well, how can you do that?
22 What does the claim language actually say?

23 MR. FENSTER: Let's go back to 117,
24 please.

25 A. It says -- excuse me.

1 Okay. It says retrieving one or more
2 predetermined responses. So as long as one of those ads
3 is an ad that was in there before I entered my request,
4 and even Dr. Allan didn't say that every single one of
5 those six or seven or eight ads, maybe up to eleven,
6 that Yahoo! returns came in during that tenth of a
7 second.

8 So the claim is met. That limitation is met
9 when one of the ads was in the Elcaro database. And we
10 saw the quote from Mr. Kannan who said Elcaro is the
11 repository of the ads.

12 Q. (By Mr. Fenster) All right. So have you
13 reached a conclusion that 26(c) is met by Yahoo!'s
14 Sponsored Search?

15 A. Yes, I have. It is.

16 Q. Let's go ahead to 120 and move on quickly
17 through Claim 28.

18 So did you find that -- you found that all of
19 26 was met, so we can check off the preamble of 28; is
20 that right?

21 A. Yes, you can.

22 Q. All right. Now, let's move on to 28(b1).

23 MR. FENSTER: 121. Thank you.

24 Q. (By Mr. Fenster) And remind us, we have two
25 sub-elements, two possible classifications?

1 A. Yes.

2 Q. Now, is -- does the claim require both, or is
3 one sufficient to satisfy?

4 A. I believe because it says at least one of, (i)
5 and (ii), you can meet this limitation either by
6 classifying the message as being able to be responded to
7 automatically, or by classifying a query as requiring
8 assistance from a human operator, or both.

9 Q. Okay. So let's talk about that first little
10 classification, sub (i), classifying it being able to
11 responded to automatically.

12 Does Yahoo! Sponsored Search meet that
13 element?

14 A. Yes, it does.

15 Q. Okay. And did you find evidence in the
16 testimony of Yahoo!'s own engineers?

17 A. Yes. Mr. Kolm.

18 MR. FENSTER: 123, please.

19 A. He was asked the following three questions and
20 gave these answers:

21 So is it accurate to say that Yahoo! makes a
22 determination as to whether there are any ads that are
23 relevant and of sufficient quality to serve.

24 He said: Relevant and of sufficient quality
25 and meet the advertiser's constraints, advertiser and

1 publisher constraints.

2 We're not dealing with the publisher side, so
3 advertiser constraints are what I focused on.

4 And the next question: Okay. And if
5 Sponsored Search determines that there are no ads that
6 are relevant of sufficient quality and that meet the
7 advertiser's constraint -- advertiser and publisher
8 constraints, then what?

9 And he said: We return no ads.

10 The next question: Is this determination as
11 to whether there are ads to serve that meet all the
12 requirements that you just identified? Is that done
13 automatically by software?

14 And he said: Yes, it is.

15 That's the decision that I believe classifies
16 a query, a search request, which is the non-interactive
17 electronic message as either being able to be responded
18 to automatically, if there are ads of sufficient quality
19 and sufficient match, or it's not able to be responded,
20 if there aren't any ads.

21 Q. (By Mr. Fenster) So Yahoo!'s own engineer,
22 Mr. Kolm, admitted freely that Yahoo! makes a
23 determination as to whether it has ads to serve, right?

24 A. Yes.

25 Q. Can you remind us, going back to 122, what the

1 Court's claim construction is for classifying?

2 A. The Court said classifying the electronic
3 message means determining whether the electronic message
4 falls into one or more categories.

5 And in this case, the categories are I have
6 ads that I can return automatically, or I don't have ads
7 that I can return automatically, which means I can't
8 respond automatically.

9 Q. Okay. So did you find that Yahoo! infringes
10 or meets the elements of Claim (b1), because it
11 satisfies the step of (b1)(i)?

12 A. Yes.

13 Q. And did you also do --

14 MR. FENSTER: That's 124, please.

15 Q. (By Mr. Fenster) And did you also analyze
16 whether Yahoo! Sponsored Search meets the second
17 classification, which is not required -- only one is --
18 but the second classification of (b1)(ii)?

19 A. Yes, I did.

20 Q. Okay. And that requires classifying as
21 requiring assistance from a human operator?

22 A. Yes.

23 Q. And what did you find with respect to
24 Sponsored Search?

25 A. Much like I found in the Google case, that

1 Yahoo! keeps records on what's happening with ads and
2 clicks and queries in their system, and that they are
3 concerned about click fraud and impression spam.

4 And particularly I'm focusing on impression
5 spam, because that involves a query and some sequence of
6 advertisements that that query brings up.

7 And Mr. Kolm was also asked about that.

8 Q. Okay.

9 MR. FENSTER: Let's go to 125.

10 A. The question was: So is it accurate to say
11 that there is a set of programs that generate reports
12 from which you can determine whether the engineering
13 group needs to be involved to deal with cases of
14 potential click fraud or impression spam?

15 And he said: Yes. There's -- missed a little
16 grammar here -- there is reports generated, and if those
17 reports look unusual, the engineering team will be asked
18 to evaluate.

19 Q. (By Mr. Fenster) Okay. Now, the second
20 classification step requires classifying as requiring
21 human assistance?

22 A. Yes.

23 Q. So how does Yahoo!'s generation of these
24 reports meet that limitation?

25 A. If impression spam is found to be likely to be

1 present, those reports cause the engineering team to be
2 asked to evaluate, and that's people, okay? That's
3 people who work for a particular manager at Yahoo!, and
4 those -- those people are told: Take a look at these
5 particular parts of the data that we've collected about
6 use of our Sponsored Search system and see if it's
7 something we ought to respond to.

8 Q. Now, did you analyze -- actually, did you find
9 any other evidence that supported your conclusion with
10 respect to 28(b1)(ii)?

11 A. Yes. I found a -- sort of a PowerPoint set of
12 slides that apparently was a talk that was given by one
13 of the managers at Yahoo! who works in what they call
14 the Traffic Protection Group, which is their spam work.

15 And it --

16 Q. Excuse me, Dr. Rhyne.

17 This is from Plaintiff's Exhibit 608.

18 A. Right.

19 Q. Go ahead.

20 A. And it was interesting that he referred to the
21 system he was describing as the Traffic Protection and
22 Classification Platform.

23 He has -- you can see the interesting
24 terminology. He has a traffic protection rule engine,
25 which is the rule system that looks in all that data.

1 And he says that that system enables consistent advanced
2 classification and filtering of searches -- clicks,
3 searches, and impressions.

4 And, again, impression is that impression
5 spam. It's a combination of a query and a repetitive
6 sequence of bringing up the same ad.

7 So they, in their own terminology, refer to
8 that as a form of classification.

9 Q. Now, Dr. Rhyne, with respect to this claim
10 element of 28(b1)(ii), did you analyze that for literal
11 infringement?

12 A. I've looked at it for literal infringement,
13 and I've also looked at it as based on something that I
14 believe that Google or their experts may argue is a
15 non-infringement situation.

16 I've also looked at it from the point of view
17 under Doctrine of Equivalents.

18 Q. Okay. And did you -- did you find that
19 Sponsored Search literally meets Claim Element (b1)(ii)?

20 MR. ROOKLIDGE: Objection, report.

21 Excuse me. I withdraw that to this
22 question. The Doctrine of Equivalents.

23 THE COURT: Okay. Insofar as literal
24 infringe is concerned.

25 THE WITNESS: I found literal

1 infringement.

2 MR. FENSTER: May I have a moment?

3 THE COURT: Yes.

4 Q. (By Mr. Fenster) And did you also analyze --
5 and did you also make -- analyze Sponsored Search under
6 the Doctrine of Equivalents with respect to 28(b1)(ii)?

7 MR. ROOKLIDGE: Objection, report.

8 THE COURT: Okay. Approach.

9 (Bench conference.)

10 MR. FENSTER: Your Honor, because of
11 Yahoo!'s late production of documents related to click
12 protection, you authorized a supplemental report. This
13 was in the supplement report at Paragraph --

14 MR. GIZA: 20.

15 MR. FENSTER: -- 20.

16 THE COURT: Okay. Overruled.

17 (Bench conference concluded.)

18 Q. (By Mr. Fenster) So, Dr. Rhyne, did you reach
19 a conclusion with respect to whether Sponsored Search
20 meets 28(b)(ii) under the Doctrine of Equivalents?

21 A. I did.

22 Q. And what was your finding?

23 A. Well, as I understand the possible argument,
24 it was that in the Traffic Protection system, in order
25 to recognize impression spam, you have to group together

1 a sequence of queries.

2 Impression spam is likely to occur if you get
3 someone who enters the same query, the same search over
4 and over again in a short period of time and never
5 actually clicks on an ad that comes up. They're just
6 trying to get somebody else's ad to appear and not be
7 clicked on, which makes it look less attractive.

8 So in order to recognize it, you don't look at
9 an individual query by itself, but rather you look at a
10 group of queries.

11 And if someone interprets this claim to
12 require that you have to look at each individual query
13 by itself without regard to anybody else, the way I set
14 forth my Doctrine of Equivalents argument is it's the
15 same function.

16 The way it's done is to group together a set
17 of queries, which basically identifies the whole group
18 and each and every individual query in that group as
19 being an example of impression spam. That's a query
20 that needs to be looked at by a human being.

21 If you classify a group of queries, you
22 certainly have classified each individual query. So I
23 don't see that as a substantial difference. And the end
24 result is, you identify one query and a lot of other
25 queries collectively as needing human interaction.

1 And so I think even if someone interprets the
2 claim to require only looking at individual ones, you
3 still have identified each and every individual query in
4 that set. So I think that would be infringement under
5 the Doctrine of Equivalents, even if the claim has
6 interpreted it that way.

7 Q. So based on your review of all the evidence,
8 including the testimony from Yahoo!'s own engineers and
9 the review of their documents, you found that Yahoo!
10 meets 28(b1)(ii) both literally and under the Doctrine
11 of Equivalents?

12 MS. DOAN: Objection, leading, Your
13 Honor.

14 THE COURT: Pardon?

15 MS. DOAN: Leading.

16 THE COURT: Overruled.

17 Q. (By Mr. Fenster) Is that right?

18 A. That's true.

19 Q. All right.

20 MR. FENSTER: So let's go to 127, please.

21 Q. (By Mr. Fenster) So with respect to (b1), can
22 we put a check by 28(b1)?

23 A. Both parts. That's why I have two checks put
24 on this slide.

25 Q. Okay. So now just a reminder, to infringe

1 (b1), only one of those needs to be done?

2 A. Yes, that's my opinion.

3 Q. Okay. Now, with respect to the first
4 classification, does that determination requiring --
5 determining that it can be responded to automatically,
6 does that happen before step (c)?

7 A. Yes.

8 Q. Okay. And what about the second
9 classification that Google -- that Yahoo! does, does
10 that happens before or after step (c)?

11 A. As a computer guy, I would say, yes, it's one
12 of those two. But it happens after, okay, because they
13 analyze that data some time later.

14 So it does not happen before step -- let me
15 put it on the record precisely.

16 The infringement that I have found for
17 step 28(b1(ii)) does not occur before the retrieving step
18 of 28(c).

19 Q. Okay. Now, if the Court instructs the jury
20 that the step of 28(b)(i) has to be performed in order
21 before 28(c), do you find that that -- that 28 would be
22 met?

23 A. I need to understand your question better.

24 Q. Sure.

25 A. If the Court -- you mean if Judge Everingham

1 instructs the jury that both -- that some part of (b1)
2 has to be performed?

3 Q. Yes.

4 A. Okay.

5 Q. If he -- if he instructs the jury that the
6 steps of 28(b1) -- that (b1) has to be satisfied before
7 28(c), do you find that that -- that that limitation is
8 met?

9 MR. ROOKLIDGE: Objection, report.

10 THE COURT: Counsel, approach.

11 (Bench conference.)

12 THE COURT: The first thing is this:
13 We're not going to have objections by committee,
14 Mr. Rooklidge. Y'all need to appoint one person at your
15 table to make objections on behalf of your client, okay?

16 And I'm not fussing at either you or
17 Ms. Doan for doing that, but, you know, it's highly
18 irregular to have multiple people at counsel table
19 standing up and making objections when I know that only
20 one of you is going to be actually doing the
21 cross-examination.

22 So pick -- pick a person and assign that
23 task to that person.

24 Now, where is this in his report?

25 MR. FENSTER: Your Honor, this is an

1 issue that just came up, as you know, yesterday. So out
2 of an abundance of caution and to be absolutely
3 respectful of Your Honor's ruling, I'm trying to make it
4 perfectly clear for JMOL purposes and for the jury which
5 it meets and which it doesn't.

6 THE COURT: Well, I understand. In light
7 of the fact that -- the Court's claim construction
8 position, I don't recall being advanced on this by the
9 Defendants on this indefinite argument that I rejected
10 given the procedural posture through which this claim
11 construction issue has arisen.

12 I'm overruling the objection.

13 MR. FENSTER: Thank you, Your Honor.

14 (Bench conference concluded.)

15 Q. (By Mr. Fenster) Let me try to restate that
16 question.

17 A. I do remember it.

18 Q. Okay. So if -- I'm not sure I do.

19 If the Court determines and instructs the jury
20 that the steps in 28 have to be performed in order, do
21 you find that 28 -- the steps in 28 are met by Yahoo!
22 Sponsored Search?

23 A. Yes. As far as -- because the first part of
24 (b1) -- and I believe it only requires that one of those
25 two parts be done -- it's definitely done before 28(c).

1 Q. Now, 28(c) --

2 MR. FENSTER: Let's go on to 28(c).

3 Q. (By Mr. Fenster) 28(c) requires retrieving one
4 or more predetermined responses corresponding to the
5 interpretation of the electronic message from a
6 repository for automatic delivery to the source when the
7 classification step indicates that the electronic
8 message can be responded to automatically.

9 Did you make a finding with respect to
10 Sponsored Search meeting -- whether it meets
11 Claim 28(c)?

12 A. I did.

13 Q. And what did you find?

14 A. Well, I'll reuse the same piece of evidence,
15 and this is only some of the evidence that's cited in my
16 report.

17 But here is the quote from Mr. Kannan about
18 that Elcaro is the repository of the ads, and I
19 identified the way the Affiliate Server pulls up ads and
20 returns them. It gets them from Elcaro in order to send
21 them back, after the matching and selection process, the
22 scoring process have all been performed.

23 And I believe that that meets 28(c) in the
24 same way that 26(c) was previously met.

25 Q. Okay.

1 MR. FENSTER: And if we can go back to --
2 I'm sorry -- 123.

3 Q. (By Mr. Fenster) This was Mr. Kolm, the Yahoo!
4 engineer's testimony, where he says it makes a
5 determination?

6 A. Yes.

7 Q. So is that ad returned only after a
8 determination is made that there is an ad to serve?

9 A. Obviously. They have to find the ad. And
10 they go through this -- find a set of matching ads and
11 then they score them, and they would have certainly
12 classified the ads as being able to respond when they
13 find it.

14 So the ordering is met.

15 Q. Okay. And with respect to -- and is that
16 predetermined -- is it a predetermined response?

17 A. Each and every one of the ads is a
18 predetermined response retrieved from the repository
19 that is Elcaro.

20 Q. And that's for the same reasons that we went
21 through with respect to 26(c)?

22 A. Absolutely.

23 Q. Okay. And does -- do those predetermined
24 responses correspond to the interpretation of the
25 electronic message?

1 A. Yes. The reason that they're in that set
2 that's considered as possible ads to return is that the
3 matching and the scoring and all that taking place to
4 try to identify the best ads to send back, based on what
5 came in in the message.

6 MR. FENSTER: And let's go to 127,
7 please.

8 Q. (By Mr. Fenster) And we saw, with respect to
9 26(c), that they are retrieved from a repository?

10 A. Yes, Elcaro.

11 Q. And are they retrieved for automatic delivery
12 to the source?

13 A. Yes.

14 Q. And we already talked about when the
15 classification step indicates that the message can be
16 responded to automatically.

17 So did you find that Sponsored Search meets
18 all of the elements of Claim 28?

19 A. Yes.

20 Q. That's 129.

21 Now let's move on to Claim 30, which is
22 actually being asserted -- asserted for infringement
23 here.

24 So did you analyze whether Sponsored Search
25 meets Claim 30?

1 A. I went through -- first, we've already been
2 through 28, and that depends on 26. So having done 26
3 and 28, I'm now at the six elements or steps of
4 Claim 30. And I've done all of them for Sponsored
5 Search.

6 Q. Okay. Now, how did -- and did you make a
7 finding as to whether Yahoo! Sponsored Search meets
8 Claim Element 30(b1)?

9 A. I did.

10 Q. Okay. Can you walk us through that?

11 A. Yes. I've got a piece of -- again, I haven't
12 tried in these slides to show every piece of evidence
13 that I cite in my report and the charts that I've
14 produced, but if we go, I think, to 133.

15 Q. Sure.

16 A. Okay. This is from a Yahoo! document. You
17 can see this Bates number down here, YH-PSET0004304.
18 And it was just -- I liked it for the purpose of this
19 slide presentation, because it's a prose description.

20 It says how Sponsored Search works, an
21 overview, to obtain the best result set, Sponsored
22 Search employs several search technologies as specified
23 by the partner feed configuration.

24 Now that's -- the feed is -- that's their term
25 for these messages coming in. And partners -- it's

1 interesting that Yahoo! refers to itself as a partner as
2 well as other companies who may make use of Yahoo!'s
3 search capabilities.

4 It says: Most search technologies use a
5 canonical form of the raw query -- that's what's --
6 that's the message -- to find relevant ad listings --
7 and this is, again, a reference to the older database,
8 Live Search database, but now it's been replaced by
9 Elcaro -- as a function of bidded term values. Those
10 are part of the advertisements. Others employ
11 content-driven technologies to obtain eligible listings.
12 This just is talking about the match. If we go to the
13 next slide, it's a continuation of that. And the point
14 I have here is that in addition to keyword match, they
15 also use this geo-targeting graphical -- geographical
16 targeting.

17 If I want my ad only to be shown to people in
18 Texas, then that's what they do. They look at the query
19 and say, what does the query identify as its location?
20 And if the advertiser wants to match Texas to a querying
21 person from Texas, that's what geo-targeting is.

22 MR. FENSTER: And this document, just for
23 the record, is in evidence as Plaintiff's Exhibit 968.

24 Q. (By Mr. Fenster) Now, did you find any
25 evidence in Yahoo!'s actual source code that shows them

1 meeting 30(b1)?

2 A. I did.

3 MR. FENSTER: Let's go to 135, please.

4 A. I identified this in my report, but basically,
5 here's a sub-routine that's called parse, which is a
6 computer word for analyze or search through, the
7 arguments. And they also have an access handler that
8 when you look at the details of the software, those two
9 functions, among others, parse the incoming query into
10 what are called keyword value pairs.

11 So a keyword would be like location, and the
12 value would be Texas, and another one would be search
13 term, and it would say pizza. It goes through that for
14 both text and attributes.

15 MR. FENSTER: And for the record, this
16 document that has the source code is in evidence as
17 Plaintiff's Exhibit 1060.

18 Q. (By Mr. Fenster) Now, Dr. Rhyne, yesterday we
19 took a look at your summary charts, which was Exhibits
20 163, and you have evidence starting at Page 1 -- Page 33
21 of 47 for 30(b1); is that right?

22 A. Yes.

23 Q. And then that continues to Page 36.

24 A. If you stop for a moment, that's some of the
25 cites to that software that I got encapsulated in the

1 previous graph.

2 Q. And then it continues on Page 35. This is all
3 still evidence for 30(b1), right?

4 A. Yes. That's that same drawing I was repeating
5 about the matching again.

6 Q. And then this is evidence on Page 36, and this
7 is a document from Plaintiff's Exhibit 968.

8 A. Right.

9 Q. How did --

10 A. This was about geo-targeting.

11 Q. Okay. And then last, on Page 37, you have a
12 quote from Plaintiff's Exhibit 964.

13 A. Yes.

14 Q. Now, Dr. Rhyne, Exhibit 163 has a lot of
15 evidence in it.

16 Did you prepare or direct the preparation of
17 an even more summary chart just setting forth the --
18 just citing the evidence that's in your -- in your
19 summary chart?

20 A. Yes. You asked me to go through and take the
21 previous chart that actually had all the citations from
22 the evidence itself and produce an even smaller chart
23 that just -- instead of copying in the text from the
24 references, just identified them by Bates numbers and
25 also included for deposition testimony, the questions

1 and answers that I thought were relevant.

2 And I think it reduced what previously was
3 about 50 pages by about half. It's down to 25 pages now
4 for Yahoo!. And I did a similar thing for Google, and
5 it's only 22 pages.

6 Q. Okay. And is that Exhibit 163A?

7 A. Yes, it is.

8 Q. And so, for example, for 26 in the preamble,
9 all you do is list the exhibit --

10 A. Yes.

11 Q. -- with the Bates number that you refer to,
12 the exhibit Bates number and the actual deposition
13 testimony that you relied on Q and A with a citation?

14 A. That's correct.

15 Q. And is that the only thing that appears in
16 this document?

17 A. I believe so. That -- that's what I've
18 attempted to do.

19 Q. And this is a summary of the evidence that you
20 relied on -- is this a summary of the evidence from
21 Yahoo! that you relied on in forming your opinions?

22 A. It is. It's the same set of evidence that I
23 had in the more complete chart, but I just deleted from
24 this particular set of pages the actual text of the
25 citations.

1 I left the text of the depositions, but for
2 the other documents, I just gave you the exhibit number
3 and the Bates numbers of the pages.

4 MR. FENSTER: Your Honor, I'd like to
5 offer -- move 163A into evidence.

6 MR. ROOKLIDGE: Objection, hearsay.

7 THE COURT: Objection?

8 Ladies and Gentlemen, I'm going to
9 receive into evidence 163A for the limited purpose of
10 providing you with a summary of the evidence on which
11 Dr. Rhyne relied for the purpose of forming his opinion.
12 You should limit your consideration of it for those
13 purposes.

14 Q. (By Mr. Fenster) So, Dr. Rhyne --

15 THE COURT: Be received for those
16 purposes.

17 MR. FENSTER: Thank you very much, Your
18 Honor.

19 Q. (By Mr. Fenster) So just so the jury will know
20 what this document is, and we'll have a similar one for
21 Google, when you see the evidence cited on the right
22 next to a claim element, what does that mean?

23 A. It means that I went to that page of that
24 exhibit and found something that I felt was directly
25 supportive of my opinion, for example, that, in this

1 case, Step 26(a) was met by the Sponsored Search system.

2 Q. And just as an example, since we're on 30(b1),
3 this is at Page 14 of Exhibit 163A.

4 MS. DOAN: Is it A or B, Counsel?
5 Objection, Your Honor.

6 MR. FENSTER: It's 163A.

7 THE COURT: Okay.

8 Q. (By Mr. Fenster) So with respect to -- so
9 what's listed -- or is this the evidence that you relied
10 on with respect to -- in forming your opinions with
11 respect to 30(b1)?

12 A. Yes. The first several are, I believe, based
13 on my recollection of the very low Bates numbers, are
14 printed pages from the software okay.

15 Q. All right.

16 A. And the others are -- the later ones in this
17 particular section on 30(b1) are other Yahoo! documents.

18 Q. All right. Thank you very much, Dr. Rhyne.
19 So going back to your Exhibit 136 --

20 A. Changed places. That's why.

21 Q. All right. Okay. So may we place a check
22 next to 30(b1)?

23 A. I had one put on the slide for that purpose to
24 indicate that I believe 30(b1) is met by Sponsored
25 Search.

1 Q. All right. And can you tell us, did you reach
2 a finding as to whether or not Sponsored Search meets 30
3 -- meets 30(b2)?

4 A. Yes, I have. I believe that it does.

5 Q. All right. And can you show us some evidence
6 that you relied on to meet that -- to reach that
7 conclusion?

8 A. Well, a lot of evidence is in this
9 Exhibit 163A, but I pulled out a simple piece to point
10 to, this part of the testimony of Mr. Kolm that's on my
11 Slide 137.

12 And he was asked: Okay. And what information
13 about the query -- that's the electronic message or the
14 search -- is compared to the attributes of the ad?

15 And he said: At a high level, any information
16 about the query we have, so we can look at the query and
17 look at a character basis, how often the character shows
18 up; we can look at it on a word basis; we can identify
19 words that are phrases that belong together.

20 And he's basically confirming that they go
21 through the query and produce a case model by finding --
22 the requirement in the Court's construction is text and
23 attributes, and the text would be the keywords, and the
24 attributes would be like the location of where the
25 person who sent in the query was found.

1 Q. Okay. And based on this testimony from
2 Yahoo!'s engineer, Kolm, and the evidence summarized in
3 Exhibit 163A, did you find that 30(b2) is literally met?

4 A. Yes.

5 Q. All right.

6 MR. FENSTER: Let's move on to 30(b3) and
7 138, please?

8 Q. (By Mr. Fenster) And did you find that
9 Sponsored Search meets the requirement of flagging the
10 attributes of the case model which are detected in the
11 electronic message?

12 A. Yes.

13 Q. All right. Now, remind us, the electronic
14 message is?

15 A. The http request, with all those characters,
16 and the keyword that's in the search request that's sent
17 to the Yahoo! front end.

18 Q. Okay. And flagging the attributes, what does
19 that mean?

20 A. That's what -- when you go through that
21 complex set of question marks and slashes and letters
22 and you find the information, such as the resource
23 locator that can be interpreted to give you a location,
24 you're finding that characteristic of the message that's
25 separate from the text.

1 Q. Okay. And did you find any evidence in
2 Yahoo!'s source code, their actual source code for
3 Sponsored Search, that shows that they meet the element
4 of flagging the attributes in (b3)?

5 A. I did. And I discussed this in more detail in
6 my expert report, but I will point specifically to
7 several functions that are found in that software, the
8 first of which is called prepare affiliate parameters.

9 That's in the affiliate server where it goes
10 in and looks for the parameters of the message. It says
11 parse the afili -- in the affiliate the data and to get
12 UIP, which I believe, when I looked at the source code,
13 is associated with finding the location that's
14 identified by that universal resource locator that's
15 part of that http message.

16 Q. Okay. And in addition to that source code
17 that you just cited, did all of these Exhibits 937, 940,
18 1060, 1061, and all of these citations, did those
19 support your findings?

20 A. Yes, they do.

21 Q. Now, let's move on to 30(b4), comparing the
22 flagged attributes of the case model with the stored
23 attributes of the stored case model of the case base.

24 A. All right.

25 Q. All right. Now, this is -- did you find that

1 that element is met?

2 A. Excuse me. I did.

3 Q. All right. Now, one thing that you cite here
4 is the Kannan depo at 29, 19 through 25?

5 A. Yes.

6 Q. Did that support your conclusion?

7 A. It did, and I actually copied that in.

8 Q. Actually, I think that --

9 A. Okay. I'm sorry.

10 Q. -- I have the transcript right here.

11 A. That's right.

12 Q. This is from the deposition of Ashvin Kannan.
13 And I apologize. I don't know how to pronounce that
14 name. And this is from his June 24, 2010, deposition at
15 Page 29 -- Page 29, Lines 19 through 25.

16 It says:

17 QUESTION: Okay. So you also mentioned the
18 Yellowstone system. Is that always used after the QBERT
19 system in Channel 1 or Feed 1?

20 ANSWER: Yeah. So -- yes. So Yellowstone
21 is -- is actually the system that retrieves the ads.
22 QBERT in that Feed 1, that situation, just provides the
23 query formulations.

24 And was that part of the testimony that you
25 relied on?

1 A. Yes. And that feed that he's talking about is
2 the channel through which the queries that are entered
3 into the Yahoo! search system come from.

4 Q. Okay. Now, you started to go through this
5 deposition testimony that you actually cite in 163A, and
6 this is from Yahoo! engineer Kolm?

7 A. Yes.

8 Q. And what is this testimony?

9 A. Well, he was asked: And so King Kong --
10 that's another one of those software systems that select
11 advertisements as part of the preliminary advertisement
12 selection -- and he said -- the question was: So King
13 Kong compares the raw query with what information from
14 the ad?

15 He said: It can look at the ad's title, the
16 description, the display URL -- that's that universal
17 resource locator -- and the information on the landing
18 page that you would go to if you clicked on the ad.

19 Q. So let me stop you there.

20 So it can look at the ad's title, the
21 description, the display URL, and the information on the
22 landing page?

23 A. Uh-huh.

24 Q. Are any of those things attributes of the ad?

25 A. The URL -- well, the URL is in the ad, but at

1 that point, that's -- that's more the text of the ad, I
2 think.

3 The attributes of the ad would be like the
4 location restrictions and things like that that they
5 made, or if they said: I don't want this ad to be shown
6 on my competitor -- you know, in response to a
7 competitor -- there are all these things that the
8 advertiser can say about where and what (sic) they want
9 their ad to be done.

10 Q. And does Sponsored Search make a comparison
11 between text and attributes --

12 A. Yes.

13 Q. -- from the electronic message with text and
14 attributes of the ad?

15 A. The -- an example of text would be keyword to
16 maybe the -- a line of the ad. An example of attributes
17 would be that geo targeting that we looked at a little
18 while ago.

19 Q. Okay. And the evidence that you have to
20 support your conclusions for 30(b4) is on Pages 17 and
21 18 --

22 A. Yes.

23 Q. -- of Exhibit 163A?

24 A. Yes.

25 Q. All right. And did you find that the -- that

1 Yahoo!'s Sponsored Search literally meets the elements
2 of 30(b4)?

3 A. I did.

4 Q. Now, did we look at 141, or did I take you
5 away from that too fast?

6 A. This is just another quote from Mr. Kolm.

7 Q. Okay.

8 A. It says about the same thing that we saw.

9 He was asked: Am I correct that the overall
10 relevancy score will generally increase the more
11 similarities there are between the text and other
12 information from the query and the text and other
13 information from the ad?

14 And he said: Yes, that would be a fair
15 statement.

16 Now, we're going to talk about scoring in a
17 minute, but the point here is that he agreed that the
18 process of selecting ads, which ultimately does a
19 relevancy score, involves looking for similarities
20 between the text of the ad -- excuse me -- text and
21 other information from the query -- that's text and
22 attributes -- and the text and other information from
23 the ad -- that's text and attributes of the ad, which is
24 what we've been dealing with in working our way through
25 (b3), (b4), and (b5) of Claim 6 -- of Claim 30.

1 Q. So when Dr. -- Mr. Kolm from Yahoo!, their own
2 engineer, admits that it compares text and other
3 information from the query, that is talking about text
4 and attributes from the query?

5 A. Yes.

6 Q. And he says that that's compared to text and
7 other information from the evidence. And is that text
8 and attributes from the ad?

9 A. Yes.

10 Q. And does -- do you have an opinion as to
11 whether that's comparing the case model to an exemplar
12 case?

13 A. Yeah. The case model is the text and
14 information from the query which has been extracted out
15 of that http request by the software that Yahoo! has in
16 its front end of its -- the early part of their
17 Sponsored Search system.

18 And the stored case model are the ads and
19 attributes of the ads and other information that are
20 associated with them that are out in that Elcaro
21 database.

22 Q. Okay.

23 A. So this is exactly describing finding
24 similarities between the information about the query --
25 that's the case model -- and information about the ad --

1 that's the stored case model.

2 Q. Now, although the -- you cited this originally
3 for 30(b4), does this quote also -- from Mr. Kolm also
4 support your finding with respect to 30(b5)?

5 A. Interestingly enough, I'll come back to it for
6 30(b6) as well. He basically laid out the heart of what
7 happens. This is the way in which the Sponsored Search
8 system infringes Claim 30. It does exactly -- in that
9 one sentence, in answering that question, he's
10 encapsulated what they do.

11 Q. Now, in finding that Yahoo! Sponsored Search
12 infringes Claim 30, are you basing your analysis only on
13 this quote from Mr. Kolm?

14 A. Oh. Oh, no, no. You can go to -- I cited a
15 number of software references and other things in my
16 written report, and then I've also identified them in
17 this Exhibit 163A.

18 Q. And do Yahoo!'s own documents support
19 Mr. Kolm's statement?

20 A. Both the software and the -- and the documents
21 do.

22 Q. All right. So let's go ahead back to your
23 Slide 142. And can we check off 30(b4)?

24 A. Yes, you can.

25 Q. And I think we just talked about (b5). Did

1 you find that the Sponsored Search meets 30(b5) of
2 comparing -- comparing the text of the case model with
3 the stored text of the stored case model? Did you find
4 that that element was met?

5 A. Yes, I have.

6 Q. And, in fact, does that quote from Mr. Kolm
7 support that as well?

8 A. Exactly.

9 Q. All right. And the other evidence that you
10 have cited in 163 for 30(b5), does that also support
11 your conclusion?

12 A. Yes.

13 Q. All right. So did you find that Yahoo!
14 Sponsored Search meets 30(b5)?

15 A. Yes.

16 Q. All right. So that's 146.

17 Okay. Now, you've already touched briefly on
18 30(b6). Did you find that Yahoo! Sponsored Search meets
19 Element 30(b6) of assigning a score?

20 A. Yes. They do create a score. A couple of
21 them, in fact. They talk about a clickability score and
22 something they call the overall relevancy score as part
23 of their way of taking that subset of advertisements and
24 picking the ones that they think would be the best ones
25 to send back in the hopes that somebody will click on an

1 advertisement.

2 Q. Okay. So going back to 141, did Mr. Kolm's
3 testimony that we just looked at support that?

4 A. Yes. He said: Am I correct that the overall
5 relevancy score will generally increase the more
6 similarities there are between the text and other
7 information from the query and the text and other
8 information from the ad?

9 He said: Yes, that would be a fair statement.
10 So he's talking about this computed relevancy score.
11 And then he was asked: And the lower the similarity
12 between those things, the lower overall relevancy score?

13 And he said: Yes.

14 Q. Okay.

15 MR. FENSTER: Now, let's go back to 146
16 quickly.

17 Q. (By Mr. Fenster) Okay. So let's look at the
18 actual text of the -- what the claim requires.

19 So assigning the score, that was the overall
20 relevancy score?

21 A. Yes.

22 Q. And it says: The score increasing when at
23 least one of the attributes and the text match the
24 stored case model.

25 A. Yes.

1 MR. FENSTER: So let's go back to 141.

2 Q. (By Mr. Fenster) QUESTION: Am I correct that
3 the overall relevancy score will generally increase the
4 more similarities there are between the text and the
5 other information from the query?

6 Does that support your finding with respect to
7 this part of 30(b6)?

8 A. Yes.

9 Q. Now, 30(b6) then goes on to say: And the
10 score not increasing when at least one of the attributes
11 and the text do not match the store case.

12 Does his testimony support that element?

13 A. Yes.

14 Q. Where so?

15 A. He says in the second question: The lower the
16 similarity, the lower the score.

17 I paraphrased. Let me read it exactly.

18 QUESTION: And the lower the similarity
19 between those things, the lower overall relevancy score?

20 And he said: Yes.

21 Q. Now, did you analyze -- so did you make a
22 finding with respect to Claim 30(b6) under literal
23 infringement?

24 A. Yes.

25 Q. And what did you find?

1 A. I found, based on my analysis of a lot of
2 the -- all the references that are in this Exhibit
3 163A -- but this quote from Mr. Kannan, and we actually
4 have another -- I'm sorry -- from Mr. Kolm. There's a
5 similar quote from Mr. Kannan on my Slide 143.

6 He just was asked the same basic question: In
7 general, the better the match between the query and the
8 ad, the higher the overall relevancy score?

9 And he said: Yes.

10 QUESTION: And the worse the match between the
11 query and the ad, the lower the overall relevancy score?

12 ANSWER: Yes.

13 MR. FENSTER: Actually, let's take that
14 down, please.

15 A. Oh, I'm sorry.

16 Q. (By Mr. Fenster) That's -- that's okay.

17 MR. ROOKLIDGE: Objection, Your Honor.
18 Move to strike. That slide was agreed to be withdrawn.

19 THE COURT: All right. The jury will
20 disregard Dr. Rhyne's testimony considering the
21 immediately preceding slide.

22 MR. FENSTER: I'm sorry.

23 THE COURT: Sustain the objection.

24 THE WITNESS: I'm sorry. I didn't know.

25 Q. (By Mr. Fenster) So -- but you did have other

1 text --

2 A. I've actually looked at the software, and
3 they -- we haven't talked about it yet, but they use a
4 couple of scoring techniques: Relevancy and
5 clickability.

6 But in the relevancy, they use a technique
7 called -- the acronym is GBDT, Gradient Base (sic) -- I
8 can't remember what the DT stands for, but they
9 basically set up a tree of decision nodes that as they
10 work their way looking for these similarities, they
11 finally come down to leaves, and at the bottom of these
12 leaf nodes, they have a set of coefficients.

13 We looked at the odds multipliers for Google
14 that they multiply together. Yahoo! has information at
15 the leaves of this gradient tree, which they add
16 together to create that relevancy score.

17 And each one of those leaf values represents a
18 similarity or a lack thereof between the query or an
19 attribute of the query and the ad or an attribute of the
20 ad.

21 Q. Now, you mentioned that the score that is
22 assigned that meets 30(b6) is the overall relevancy
23 score?

24 A. That -- there are two. There's also a
25 clickability. And I think I -- in my report, I dealt

1 with both of them, but those two quotes -- well, the one
2 quote deals with the relevancy score.

3 Q. Okay.

4 MR. FENSTER: And 149, please.

5 Q. (By Mr. Fenster) Now, the -- so the overall
6 relevancy score and the clickability score, where in
7 Yahoo!'s Sponsored Search are those scores assigned?

8 A. In the Affiliate Server --

9 Q. Okay.

10 A. -- just before they decide -- that's the
11 process they use to figure out which particular ads to
12 pull out of the Elcaro database and send back to the
13 searching site, the source.

14 Q. And which of the ads that are sent to the
15 Affiliate Server are scored?

16 A. Every one of the ads that's sent to the
17 Affiliate Server in that set.

18 If I can, can I bring up 128? It's the
19 picture of the query flow. I don't believe there's been
20 an objection to that. If we can take a look.

21 Q. Yeah. Go ahead.

22 A. Okay. And the Affiliate Server is this gray
23 box in the middle, and there's this step of finding the
24 matching ads. And once those find -- there's large
25 numbers of ads in Elcaro, but in this find matching ads,

1 they get a subset, and then you can see they get the
2 clickability scores.

3 And that's also -- in this process of finally
4 producing the ads to go back, that's where they do the
5 relevancy score and the clickability score for every one
6 of those matching ads as I understand the process.

7 Q. Okay. So now going back to the claim language
8 in 149, did you find that Yahoo! Sponsored Search
9 assigned a score to each stored case model which is
10 compared to the case model?

11 A. Yes. In that Affiliate Server, they go
12 through a comparison and a scoring process. And the
13 basis for the scoring process is that comparison. They
14 use that to work their way through that Gradient
15 Boosted -- I remembered -- Decision Tree, is the DT, to
16 find those leaf node values.

17 To sum those up, that forms the relevancy
18 score. They use the relevancy score then as an
19 alternate scoring mechanism to produce that clickability
20 score.

21 Q. Okay. And did you analyze the claim element
22 30(b6) under literal infringement?

23 A. I did.

24 Q. And did you find it was literally met?

25 A. I did.

1 Q. And did you also analyze the claim element of
2 30(b6) under the Doctrine of Equivalents?

3 A. I did.

4 Q. And what did you find?

5 A. Well, again, I looked at what I believe may be
6 a non-infringement position that appears to be coming
7 from Yahoo!, which was that there may be some of those
8 leaf node values that work sort of opposite to what
9 these two -- from what the engineer from Yahoo!
10 testified.

11 He said, the more similarity, the more they go
12 up; the less similarity, they go down. But there's -- I
13 guess because it's a statistical process, they may be
14 the way to identify a particular leaf node that goes the
15 wrong way.

16 But if there's -- given that it says the score
17 increasing when at least one -- in here, it's talking
18 about -- that would -- based on that, it's my belief
19 that if -- as long as there's one of those leaf nodes
20 that makes that change, even if the others -- somewhere
21 in there, there may be a different one that goes the
22 wrong way -- as long as one of them goes the right way,
23 and the great preponderance of them, if not all of them
24 actually do, then I don't consider it a substantive
25 difference if out of -- I think they say they may have

1 as many as 2 or 300 of these leaf node values.

2 Out of all of those, if virtually all of them
3 go the right way, the fact that one of them doesn't
4 (sic) go the wrong way, I don't consider to be a
5 substantial difference.

6 It's clear that the end result is to get good
7 ads that match well and have high quality to go back
8 with the search.

9 So the result is the same; the function is the
10 same; and the way -- if 195 out of 200 or 199 out of 200
11 go the right way, I don't consider that to be a
12 substantive difference. And I have seen no data to
13 actually support that.

14 Q. Okay. So did you find that 30(b6) was met
15 both literally and under the Doctrine of Equivalents?

16 A. I did.

17 Q. All right.

18 MR. FENSTER: Let's go to 31.

19 Q. (By Mr. Fenster) Now --

20 MR. FENSTER: Actually, stay on this
21 slide for just a minute.

22 Q. (By Mr. Fenster) 30(b6) has the score
23 increasing when at least one of the text and attributes
24 match and decreasing -- that's similar to what's in 31.

25 So let's go ahead and move to Claim 31, which

1 is 150.

2 And did you find that Sponsored Search meets
3 Claim Element 31?

4 A. I did.

5 Q. And can you describe your analysis there.

6 A. Well, if we go -- I would like to spend just a
7 moment on the Court's construction on 152.

8 Q. Sure.

9 A. What the Court identified the predetermined
10 match-weight to mean, a predetermined factor that a
11 arithmetically increases the stored case models match
12 score -- and remember, there's a typographical error in
13 this slide as well. It should say a arithmetically
14 decreases. It's just --

15 THE COURT: Same one that was there
16 yesterday.

17 THE WITNESS: I promise you I worked,
18 Your Honor, but I didn't work on that last night.

19 THE COURT: That's all right. I didn't
20 either.

21 THE WITNESS: Okay.

22 A. Well, those leaf nodes are what I focused on
23 here and that Gradient Boosted Decision Tree. And those
24 leaf node values are computed beforehand, much like the
25 odds multipliers were computed beforehand. They're

1 sitting in the tree.

2 And what happens when you make the comparison
3 is, you go down -- you can think of the tree as a bunch
4 of little forks in the road, and as they're doing the
5 comparisons, they get to a node in the tree, and they
6 say: Well, now, what is that deal? Well, does that
7 keyword match the first line or something like --
8 they'll go to the left or the right.

9 And the way it's going to work, according to
10 the engineer, is that if they match better, you're going
11 to get a bigger number, and that's going to
12 arithmetically increase the relevancy score.

13 And if they don't match as well, the leaf node
14 value, when you go the other way on the branch, is going
15 to be a smaller number, and as a result, you will get an
16 arithmetic decrease, which matches 31 exactly.

17 Q. (By Mr. Fenster) Okay. So just to clarify,
18 what exactly is the predetermined match-weight in your
19 view?

20 A. It would be the difference between the leaf
21 node values based on that decision point in the tree.
22 In other words, if I -- if I get more similarity, if I
23 get down to the point where that thing is testing a
24 similarity, an attribute or a text, if I go with
25 similarity, I'll get a bigger value in the leaf node,

1 larger numerical value. If I go the other way, I'll get
2 a smaller numerical value.

3 And the difference between those two values is
4 the predetermined arithmetic increase or decrease
5 factor, since you're adding them up.

6 Q. Okay.

7 A. I'll just make up a number. I think it's got
8 to be smaller than this, but let's just say, if it's
9 more similar, it will be .5. If it's less similar, it
10 will be .3. The difference is .2.

11 That would be the predetermined arithmetic
12 increase or decrease, depending on which way you went in
13 that tree, the Gradient Based -- Boosted Decision Tree
14 process.

15 Q. Okay. And what's the predetermined
16 mismatch-weight?

17 A. It would be the other way around. If, when I
18 got to the node, I took the left branch, instead of
19 getting .5, I'd get .3, and that would be a mismatch.

20 Q. And did you find any testimony from Yahoo!'s
21 engineers that supported your conclusion that Claim 31
22 is met?

23 A. I found at least some.

24 Q. And is that on 153 of your slide?

25 A. I put that on 153.

1 Q. Okay. So this is from Kannan at 102, Lines 15
2 through 23.

3 A. The top part.

4 Q. Yeah.

5 A. It said: So -- the question: So talking
6 about the overall relevancy score, does that mean there
7 is an equation that has inputs for each of the various
8 factors that are involved?

9 And he said: Um, no. I wouldn't put it that
10 way.

11 And then he was asked: Is it the weighted sum
12 of functions of those input factors?

13 And he said: Yes.

14 And then he was asked at Page 98, Lines 24
15 through 99/5: What are all the inputs to the GBDT
16 model -- that's the Gradient Boosted Decision Tree
17 model -- that's used in the Affiliate Server to generate
18 the overall relevancy score?

19 And he said: Um. It uses features like, you
20 know, word overlap, diagram overlap, location of
21 overlap, and, you know, any scores that were provided to
22 it from, you know, the ads themselves.

23 Q. Okay.

24 A. So that's what the decisions in that tree are
25 leading to these leaf nodes at the bottom.

1 Q. Okay. And do you have additional evidence
2 that supported your conclusion summarized in your
3 Exhibit 163A?

4 A. Yes.

5 Q. All right. And did you find that Claim 31 is
6 met?

7 A. Yes.

8 Q. All right. So --

9 MR. FENSTER: 155, please.

10 Q. (By Mr. Fenster) Now, did you analyze whether
11 Sponsored Search -- so -- actually, let me back up.

12 So you found -- based on all the evidence that
13 you reviewed, what was your finding with respect to
14 whether Sponsored Search meets -- infringes Claim 31 of
15 the '947 patent?

16 A. Yes, it does.

17 Q. Literally?

18 A. Literally.

19 Q. And with respect to 30(b6) -- oh, I'm sorry.
20 This is 31. Yes. Okay. Excuse me. Strike that.

21 Now, did you also analyze infringement with
22 respect to Claim 33?

23 A. Yes.

24 Q. And did you find that Sponsored Search
25 infringes Claim 33?

1 A. Yes.

2 Q. And did you analyze that under literal
3 infringement?

4 A. Both literal and Doctrine of Equivalents.

5 Q. Okay. And what were your findings?

6 A. I think it's literally met, but alternatively,
7 I think it's met under the Doctrine of Equivalents.

8 Q. Okay. Now, under -- what evidence did you
9 find that Yahoo!'s Sponsored Search meets the Claim
10 Element 33 that would be normalized and that would be
11 divided by a maximum possible score?

12 A. Well, I base that on the testimony of
13 Mr. Kannan again.

14 Q. Okay.

15 MR. FENSTER: So 158, please.

16 A. And he was asked about this relevancy score,
17 which is the sum of all the leaf nodes that you reach
18 based on following your way through the Gradient Boosted
19 Decision Tree.

20 And he said: What's the range of the overall
21 relevancy score?

22 And he said: It's a number -- that's a number
23 between 0 and 1.

24 And then he was asked: So, theoretically, a
25 score of 1 for the overall relevancy score would mean

1 that it's exactly relevant?

2 And he said: Yes.

3 So what they've done is they've normalized
4 those sums of all the leaf nodes so they fall between 0
5 and 1.

6 I believe I recollect correctly that he was
7 asked a little more about that, and he said: Well, I
8 could make it be between 0 and 5 or 0 and 3 or something
9 like that, but they make it be between 0 and 1.

10 But what that means is, they've got to go
11 through every possible combination of adding up all
12 those leaf nodes that they might reach at the bottom of
13 this complex 2 or 300 trees and find out what's the
14 biggest value that they're ever going to get when they
15 add up all the combinations of leaf nodes, and then
16 they've got to come back and divide by that number to
17 scale it back into a 0-to-1 range, okay?

18 So they have normalized it such that the
19 biggest score you could ever get is 1, which means it's
20 exactly relevant. And that, to me, is the way they've
21 normalized so that every time they add up those leaf
22 node values on the relevancy score, they get a range no
23 bigger than 1.

24 And it's been scaled so that the biggest they
25 could ever get was 1, and they've just divided it out.

1 If it came out to be 5, they'll divide
2 everything by 5 so that it will scale back to be 1.

3 Q. (By Mr. Fenster) Now, was Mr. Kannan the
4 Yahoo! engineer -- Mr. Kannan, was he the only one that
5 testified that it was between 0 and 1?

6 A. I may be remembering it to be someone else, to
7 be frank. I just remember that particular statement,
8 and I don't remember who made it.

9 Q. Well, we saw that it was just made by
10 Mr. Kannan, which you cite here.

11 A. Yes.

12 Q. And I'm showing you Exhibit 163A.

13 A. I understand.

14 Q. And we also -- you also have a cite to the
15 Kolm deposition --

16 A. Okay.

17 Q. -- at Page 97, Lines 21 through 24.

18 QUESTION -- okay.

19 MR. FENSTER: I did that. I'm
20 embarrassed by that. All right.

21 Q. (By Ms. Fenster) QUESTION: And what are
22 the -- what is the range of values for the probability?

23 ANSWER: The probability itself, I believe, is
24 0 to 1.

25 And was that consistent with Mr. Kannan's

1 testimony?

2 A. Yes.

3 Q. And does that also support your finding that
4 Yahoo!'s Sponsored Search normalizes by dividing by a
5 maximum score?

6 A. Yes, literally.

7 Q. All right. Now, did -- you said that you also
8 found that Sponsored Search meets the claim elements of
9 33 under the Doctrine of Equivalents.

10 A. Yes.

11 Q. Can you tell me how?

12 A. Well, if -- if the claim is interpreted to
13 actually require a division, okay, of the score -- of
14 the whole score, to find the biggest score you get,
15 calculate a score, and then divide the score you
16 calculated by the maximum score that you get, the way
17 that they use the leaf nodes, I don't think they may do
18 that.

19 But what they do, instead of dividing the
20 overall score to scale it to 0 to 1, they divide each
21 one of the leaf nodes by the maximum score to scale it
22 to 0 to 1.

23 And it's kind of like, mathematically, if I
24 had an enumerator in a division that had A, B, and C,
25 and I say I'm going to divide that by D, that's the same

1 thing as saying $A \text{ over } D \text{ plus } B \text{ over } D \text{ plus } C \text{ over } D$.

2 If you take each of the contributors to the
3 sum in the numerator and divide it by the same
4 denominator, it's mathematically equivalent.

5 So it's the same function. The way may be
6 different, but it's mathematically equivalent, and the
7 result is the same. You've scaled the sum of every
8 possible combination of leaf nodes to fall within the
9 range from 0 to 1.

10 Q. Okay. So did you find that Yahoo!'s Sponsored
11 Search meets -- infringes Claim 33 of the '947 patent?

12 A. Yes.

13 Q. Now, I'm going to switch gears because now
14 we've gone through the infringement case for both Google
15 and Yahoo! for each of the accused -- asserted claims.
16 I've got just a few other questions.

17 First, with respect to Google, did you also
18 prepare a similar chart like 163A summarizing the
19 evidence in Exhibit 161?

20 A. Yes. I went through the previous chart you
21 showed yesterday and pulled out every single detail cite
22 simply identifying the cites, except I retained the
23 listing, because I thought it was particularly useful,
24 of the deposition testimony questions and answers.

25 Q. And is that Exhibit -- is this Exhibit 161A?

1 A. Yes.

2 Q. And does this summarize the list of evidence
3 that you relied on in forming your opinion?

4 A. It does.

5 MR. FENSTER: Your Honor, similar to
6 163A, I would move 161A into evidence for the limited
7 purpose and consistent with Your Honor's instructions
8 with respect to 163.

9 MR. VERHOEVEN: Objection, Your Honor.
10 It's a demonstrative.

11 THE COURT: Okay. Overrule the
12 objection, and I'll receive it into evidence, and the
13 jury may consider it for the limited purpose of showing
14 in a summary fashion, the exhibits and the testimony on
15 which the expert relied in forming his opinions in this
16 case.

17 MR. FENSTER: Thank you, Your Honor.

18 Q. (By Mr. Fenster) Dr. Rhyne, I apologize, but I
19 need to ask you to revisit with me one -- two things
20 with respect to Google, so if we can go to your Slide
21 67.

22 All right. So this is back on Google now, and
23 this was with respect to AdWords. And you took us
24 through how Google AdWords meets 28(b1)(i) and (ii). I
25 misstated that. Both subsections of 21(b1) --

1 A. Yes.

2 Q. -- 28(b1).

3 A. I did that.

4 Q. Okay. And yesterday I think I only asked you
5 about literal infringement for 28(b2) with respect to
6 Google.

7 Did you also analyze whether Google AdWords
8 meets Claim Element (b1)(ii) under the Doctrine of
9 Equivalents?

10 A. I did, and I reported that in my expert
11 report.

12 Q. And what did you find?

13 A. Actually, it's the same analysis that I
14 described a few moments ago for Yahoo!.

15 The way that they do that human analysis where
16 they say, you know, we need to have some people look at
17 this for it's possibly impression spam is, again, they
18 group together a sequence of queries, and if those
19 queries seem to produce the same advertisement
20 impression, but nobody clicks on it, they say that looks
21 like impression spam.

22 So if this is -- limitation is viewed to
23 require dealing with the individual messages rather than
24 a group of messages, then that would not be literally
25 met by the human analysis for impression -- by the

1 software analysis for impression spam.

2 But what my -- my view of that would be that
3 the function of doing them as a group is the same. It's
4 to identify searches that were potentially impression
5 spam and ask somebody to take a look at it.

6 And if you identify a group of let's say 25
7 queries, you've certainly identified each and every
8 individual query in that group as being potential
9 impression spam. And I think that that's not a
10 substantial difference between doing it in a group or
11 doing it individually for each member of a group.

12 And the result is the same. You've identified
13 one or more messages as being -- needing to be reviewed
14 by a human. And so I think that meets that
15 alternatively under the Doctrine of Equivalents.

16 Q. So just to be clear, Dr. Rhyne, did you find
17 that Google AdWords infringes 28(b) -- or meets the
18 element of 28(b1)(ii) literally, under the Doctrine of
19 Equivalents, or both?

20 A. Both.

21 Q. I have one other question with respect to
22 30(b6) along the same lines.

23 MR. FENSTER: Can we go to 87, please.

24 Q. (By Mr. Fenster) With respect to 30(b6),
25 assigning a score, yesterday you testified that Google

1 AdWords meet the element of 30(b6).

2 Did you also analyze whether Google AdWords
3 meets 30(b6) under the Doctrine of Equivalents?

4 A. I did.

5 Q. And what was that finding?

6 A. Well, again, I have to -- I only view that if
7 I am aware of something that one of the experts for
8 Google, Dr. Fox, may raise.

9 And having read his report, he has identified
10 a possibility that one of those odds multipliers may go
11 the wrong way, that under the situation where there's
12 more of a match, the odd --

13 MR. VERHOEVEN: Objection, report, Your
14 Honor.

15 THE COURT: Overruled.

16 A. The odds multiplier goes the wrong way; it
17 gets smaller. The data that he presented in his report
18 shows a very small change. The odds multiplier went
19 from about .9 to about 1.

20 And my view is that if they're looking at like
21 30 odds multipliers and the purpose of all those odds
22 multipliers is to give you a higher product, a higher
23 probability of clicking as an odds, that they've
24 identified possibly 1 out of a set of 30 or 32.

25 And first off, the claim literally requires at

1 least one of the attributes and the text match the
2 stored case model. So that would be one of the
3 attributes.

4 But even if you -- if one were to interpret
5 this that you had to have every single one of those odds
6 multipliers go up, well, literally, if there's one that
7 doesn't, that's -- that doesn't match.

8 But if it's -- 31 out of 32 go the other way,
9 I don't think that's a substantial difference, and it's
10 clear that the result, which is to get good matching ads
11 back for each query, is certainly achieved in both
12 cases.

13 So I think, if that interpretation is made,
14 that then that one would be met under the Doctrine of
15 Equivalents.

16 Q. (By Mr. Fenster) So to be clear, Dr. Rhyne, is
17 it your view that Google AdWords infringes Element
18 30(b6) literally, under the Doctrine of Equivalents, or
19 both?

20 A. Both.

21 MR. FENSTER: Your Honor, I'm just about
22 to switch to another topic that will take just a few
23 minutes. This might be an appropriate time for a break.

24 THE COURT: Well, I was hoping you were
25 getting ready to pass him.

1 THE WITNESS: So was I.

2 MR. FENSTER: I will in no more than 10
3 minutes.

4 THE COURT: But it is -- you're right.
5 It's an appropriate time for a recess.

6 Ladies and Gentlemen, take 20 minutes.
7 Be back at 25 till the hour. Remember my prior
8 instructions, and don't talk about the case.

9 LAW CLERK: All rise.

10 (Jury out.)

11 THE COURT: Step down. Have a seat.

12 Mr. Verhoeven, is your objection that the
13 Doctrine of Equivalents was not disclosed at all in his
14 report?

15 MR. VERHOEVEN: No, Your Honor, but this
16 is sum and substance of it right here, if I can
17 approach.

18 THE COURT: You may hand it up.

19 MR. VERHOEVEN: I believe this paragraph
20 here is the sum and substance. I'm sorry, Your Honor.

21 THE COURT: That's all right.

22 I'll let you renew your objection at the
23 time the case is submitted, and then I'll decide whether
24 or not to submit that both literally and under the
25 Doctrine of Equivalents, okay?

1 MR. VERHOEVEN: Thank you, Your Honor.

2 MR. FENSTER: Your Honor, that was in
3 response to Mr. Fox's report.

4 THE COURT: I understood that, and I'll
5 take that into account. I just wanted to make sure he
6 had a chance to fully explain to me his position, okay?

7 MR. FENSTER: Thank you.

8 THE COURT: All right. What else do we
9 need to take up before we start the second half of the
10 morning? Anything?

11 MR. VERHOEVEN: Nothing.

12 THE COURT: Okay. I tabled some license
13 agreement exhibits, I believe, at the hearing we had
14 after voir dire until the damages expert.

15 MR. VERHOEVEN: I thought there was a
16 ruling on the motion in limine on settlement agreements.

17 THE COURT: Well, but I thought it was
18 some that the Plaintiff was going to use in the context
19 of its damages expert. If I'm misrecollecting that, I
20 don't have to decide anything further, then I'm happy
21 not to.

22 MR. FENSTER: We're grabbing Mr. Hueston.

23 THE COURT: Well, that's fine. I just --
24 I don't know if he's -- I don't think he's going to go
25 on before lunch, but I just want to make sure that --

1 you know, I've already issued an order on the Daubert
2 rulings, but I just want to make sure we don't interrupt
3 the flow.

4 MR. ROOKLIDGE: Correct, Your Honor.
5 Was it the issue of closing the courtroom during the
6 presentation of Yahoo!'s licenses or Yahoo!'s --

7 THE COURT: Well, that was one issue, but
8 I just had a recollection that when we had our evidence
9 hearing after jury selection, I had tabled a couple of
10 issues until later in the proceeding.

11 I think one of those was the Williams'
12 e-mails, and the other one, I thought, was some license
13 agreements that were going to be used in the Plaintiff's
14 damages case.

15 MR. CANDIDO: I believe that's correct,
16 Your Honor. If I recall correctly, one of the exhibits
17 is the Serviceware license agreement where there doesn't
18 exist a signed license agreement. It's unsigned.

19 THE COURT: Okay.

20 MR. CANDIDO: And I think you were going
21 to take up whether that was admissible.

22 THE COURT: Okay. I'll take up the
23 admissibility issue. I thought I overruled it in the
24 context of a Daubert motion, but I'll take a look at it.

25 All right.

1 MR. CANDIDO: Thank you.

2 THE COURT: Thank you.

3 LAW CLERK: All rise.

4 (Recess.)

5 (Jury in.)

6 THE COURT: Please be seated.

7 Ladies and Gentlemen, before we get
8 started, it was called to my attention over the recess
9 that there's apparently someone outside passing out
10 materials to passersby.

11 I know that some of you stay in during
12 the recesses, and some of you go outside, which is
13 certainly permissible.

14 I'll repeat my instructions to you at the
15 beginning of the case. Do not discuss the case with
16 anyone, including your fellow juries -- jurors. You
17 should not seek out information or receive any
18 information like may have been passed out in front of
19 the courthouse.

20 So if you did receive any information, I
21 ask you to disregard it at this time.

22 Also, I failed to give you one of the
23 instructions that I would normally give at the beginning
24 of the case.

25 The rules of the district prevent lawyers

1 from communicating in any way with members of the jurors
2 while a case is in progress, as well as the witnesses in
3 the case.

4 If you were to -- we are in fairly close
5 quarters around here. If you were to pass a lawyer in
6 the hall or one of the witnesses or one of the parties
7 to the case, a person looks at the ground and tries to
8 avoid your gaze, they're not trying to be rude to you.
9 They're trying to abide by the rules of the Court and
10 avoid any contact with you.

11 That type of contact would be improper,
12 so please don't hold it against the lawyers if they seem
13 unfriendly. They're just trying to do what I've told
14 them to do, okay?

15 All right. With that, please proceed.

16 MR. FENSTER: Thank you, Your Honor. And
17 we'll finish up quickly.

18 Q. (By Mr. Fenster) Dr. Rhyne, now that we've
19 gone through your infringement analysis in great detail
20 for Yahoo! and Google, I have two unrelated topics.

21 This next one is kind of unrelated. It
22 relates to -- it will relate to the damages phase.

23 Did you look at two other patents to compare
24 them to the patent at issue and see whether the
25 technology was related?

1 A. Yes. I was asked to do so.

2 MR. FENSTER: Can you put up 161, please?

3 That's not it. 16 -- do you have 161?

4 All right. I'll do it there.

5 Q. (By Mr. Fenster) And this -- what is the
6 exhibit that's shown here?

7 A. This is the front page of U.S. Patent
8 No. 6,285,999, which was issued as an inventor to
9 Mr. Lawrence Page, assigned to Stanford. And it's a
10 patent that I was asked to take a look at.

11 Its title is Method of Node Ranking in a
12 Linked Database.

13 Q. Now, this patent has nothing to do with the
14 infringement case, right?

15 A. I haven't been asked to do any kind of an
16 infringement analysis, so I gather that's the case.

17 Q. Okay. You were asked to look at this for --
18 did you understand, for a damages analysis that will
19 happen later?

20 A. I think I told one of the people who deposed
21 me that this wasn't my first rodeo, and I kind of
22 figured that's what it was -- the reason that you asked
23 me to. But I was basically just asked to look at this
24 kind of as a technologist and what's this patent about
25 and does it have any relationship to the invention and

1 descriptions set forth in the Rice patent.

2 Q. Okay. And what did you find?

3 A. I found it to be relevant.

4 Q. Okay. You found the technology was related?

5 A. That's right. It deals with, as I said, node
6 ranking, the ranking and scoring of documents, much like
7 we've been doing here in the Rice patent for electronic
8 messages relating to case models, but we've been
9 focusing for the infringement analysis on
10 advertisements.

11 And I saw technical similarities.

12 Q. Okay. And just for clarity, this has nothing
13 whatsoever to do with validity; is that right?

14 A. I don't -- I don't believe this patent has
15 been advanced in any way relative to any question of
16 validity or lack thereof.

17 Q. Did you analyze another patent, the '361
18 patent?

19 A. I was also asked to look at this one other
20 patent. It's U.S. Patent No. 6,269,361 issued to a
21 number of people. I kind of think of this as the
22 goto.com patent, because you can see that the assignee
23 right here is goto.com, which was a company that was
24 involved in selling advertising.

25 And it's entitled A System and Method for

1 Influencing a Position on a Search Result List Generated
2 by a Computer Network Search Engine.

3 Q. And did you compare the technology in the 361
4 patent to that and the patent at issue here?

5 A. Yes. I commented on that in my expert report.
6 And in both -- for both of these patents, I even
7 identified several specific places in the specifications
8 of the two patents that I thought were particularly
9 illuminating.

10 Q. Thank you, Dr. Rhyne.

11 MR. FENSTER: This will become more --
12 the relevance will become evident later, Ladies and
13 Gentlemen.

14 Q. (By Mr. Fenster) So, Dr. Rhyne, I want to
15 switch gears quickly to the last line of questioning,
16 and that is, did you determine -- or what did you assume
17 with respect to the date of first infringement with
18 respect to both Google and Yahoo!?

19 A. I was asked to investigate that and provided
20 some deposition testimony and documents.

21 And with respect to Google, relying on some
22 testimony of --

23 Q. Is it Mr. Wright?

24 A. Yeah. I'm sorry. I found it.

25 See the Wright deposition at Page 103, Lines

1 20 to 25. He said that as of the first of July in the
2 year 2004, Google's SmartAd Selection System was
3 processing 90 percent of Google's search request
4 traffic. They had switched over to this SASS system.
5 And since that system is a prominent part of what I have
6 pointed to in my infringement analysis, I believe that
7 would be the first infringement, as far as I'm
8 concerned, would have taken place as of July the 1st,
9 2004 for Google.

10 Q. Okay. And what did you find with respect to
11 the date of first infringement for Yahoo!

12 A. For Yahoo!, I looked at a couple of press
13 releases, in particular one that was dated February the
14 18th, 2004, which dealt with the acquisition by Yahoo!
15 of a system named Overture, and the fact that they were
16 going to combine several systems, including this newly
17 purchased Overture system, into what they call in the
18 press release an integrated platform.

19 And since the press release was dated the
20 middle of February -- and I realize that it was going to
21 take some time to actually create that integrated
22 platform, I gave them six weeks.

23 And so I have said that I believe that a good
24 date for the date of Yahoo!'s first infringement, when
25 they had the integrated platform, would have been April

1 of 2004.

2 Q. Now, Dr. Rhyne, in her opening, Ms. Doan put
3 up this slide, this timeline, and asserted that Yahoo!
4 started selling ads back in 1995, which was before the
5 '947 patent.

6 Do you recall that?

7 A. Before the priority date --

8 MR. ROOKLIDGE: Objection, report.

9 THE COURT: Overruled.

10 A. This was before -- there are two dates that
11 are critical, or two dates that are known here. One is
12 the priority date, which is April the 3rd, I think, 1997
13 minus one year, '96. And she did cite that before that
14 '96 date.

15 Q. (By Mr. Fenster) Now, is Yahoo!'s assertion
16 that they were selling ads back in 1995 relevant in any
17 way to this case?

18 A. It's certainly not relevant to my
19 infringement.

20 MR. ROOKLIDGE: Objection, report.

21 THE COURT: Overruled.

22 A. It's not relevant to anything I've done that
23 would affect -- to the infringement analysis. And I
24 don't think it's relevant to the validity analysis
25 either.

1 Q. (By Mr. Fenster) Okay. Now, she also made a
2 point -- in fact, Google and Yahoo! both did -- of
3 saying that they began selling ads back in 2001, and the
4 patent didn't issue until 2002.

5 | Do you remember that?

6	A. Yes.
---	---------

7 Q. The fact that Sponsored Search was in use
8 before 2002 or the fact that Google was in use before
9 2002, does that have any relevance?

10 A. No. That's the date of issue -- that the
11 patent issued, the Rice patent issued.

12 But you get that priority date back to when
13 that provisional application was filed in 1996. So that
14 time period is sort of off limits. It's not where
15 infringement or invalidity or anything is at issue.
16 You always go back, for questions of validity or
17 infringement, to the date when the patent's priority is
18 established.

19 And for this patent, it's one year before --
20 as I understand it -- one year before April the 3rd of
21 1997.

22 Q. So the relevance of this date, Dr. Rhyne?

23 THE COURT: Hold on just a second.

24 MR. FENSTER: Excuse me.

25 THE COURT: You said the priority date

1 was one year before April of 1997?

2 THE WITNESS: I could be off, but let me
3 take a quick -- well, the priority date is April of
4 1997.

5 THE COURT: All right. Thank you.

6 THE WITNESS: Let me --

7 THE COURT: I just wanted to make sure
8 that the record was clear.

9 THE WITNESS: Okay.

10 A. For prior art purposes, you go back one more
11 year.

12 THE WITNESS: I misspoke. Thank you.

13 Q. (By Mr. Fenster) The one year prior was the
14 critical date?

15 A. That's the critical date relative to when you
16 look for publications and usage.

17 Q. Okay. So the relevance of this date and
18 Yahoo!'s assertion that they were practicing -- that
19 they were using the accused system before 2002 when the
20 date -- when the patent issued, when is that?

21 A. I think they're correct based on what they
22 say, but it has nothing to do with the issues of
23 infringement or validity.

24 Q. Okay. Now, Google and Yahoo! also held up a
25 bunch of patents, and they said they have a bunch of

1 patents.

2 Does that have any relevance to your analysis?

3 A. No.

4 Q. Does it have any relevance whatsoever to the
5 issues of infringement?

6 A. Well, you know, I mentioned that I worked at
7 Motorola at one time. I was in the intellectual
8 property department, and we negotiated lots of patent
9 licenses. And the fact that we had patents didn't mean
10 necessarily that we didn't infringe somebody else's
11 patent.

12 And so the issue is the patent that's in hand,
13 and that's the Rice patent. And the question is whether
14 or not the Rice patent infringes.

15 THE COURT: Excuse me. Yes?

16 MR. ROOKLIDGE: Move to strike,
17 non-responsive, and it's way beyond his report.

18 THE COURT: Well, Ladies and Gentlemen, I
19 previously instructed you that you heard some remarks
20 about the Defendants having patents of their own. And I
21 allowed that in to show that they respect intellectual
22 property.

23 And also, it may be relevant to your
24 consideration on other issues in the case, such as
25 damages as well. But it does not bear on the question

1 of infringement in this case.

2 MR. FENSTER: Thank you, Your Honor.

3 THE COURT: Okay.

4 Q. (By Mr. Fenster) Now, Dr. Rhyne, before I pass
5 you to the other side, can you just summarize your
6 finding with respect to Google AdWords and with respect
7 to Yahoo!'s Sponsored Search?

8 A. Based on the study that I've done, both of
9 those systems infringe three claims of the Rice patent
10 literally or, in some instances, under the Doctrine of
11 Equivalents. And those are Claims 30, 31, and 33.

12 Q. Thank you, Dr. Rhyne.

13 MR. FENSTER: Your Honor, I pass the
14 witness.

15 THE COURT: Mr. Verhoeven.

16 MR. VERHOEVEN: Thank you, Your Honor.
17 May I have just one second to set up,
18 please.

19 THE COURT: Of course.

20 MR. VERHOEVEN: Thank you.

21 (Discussion off the record.)

22 MR. VERHOEVEN: I'm sorry, Your Honor.
23 (Further discussion off the record.)

24 MR. VERHOEVEN: I apologize for that
25 delay, Your Honor.

1 THE COURT: That's alright.

2 CROSS-EXAMINATION

3 BY MR. VERHOEVEN:

4 Q. Good morning, Dr. Rhyne.

5 A. Good morning.

6 Q. Now, you've provided your direct testimony on
7 the issue of infringement, correct?

8 A. Yes, sir.

9 Q. And you understand that in order for Google to
10 be liable for any particular claim that's asserted, that
11 it's the burden of proof on the Plaintiff's side to
12 prove infringement, right?

13 A. Yes.

14 Q. And you understand that in order for any given
15 claim, in order for them to prove infringement, they
16 must prove that every single element of that claim has
17 been met?

18 A. Yes.

19 Q. And you understand that if even one element
20 has not been met, that that -- the jury must return a
21 finding of non-infringement; is that right?

22 A. Yes.

23 Q. Okay.

24 MR. VERHOEVEN: I'd like to put up DX
25 Demo 32, please.

1 Q. (By Mr. Verhoeven) Can you see that okay,
2 Dr. Rhyne?

3 A. Yes, sir.

4 Q. Okay. So over here, I have Claim 28.
5 Do you see that?

6 A. Yes.

7 Q. And on direct examination, you gave some
8 testimony about 28(b1), and we just brought that up to
9 make it bigger over here.

10 Do you see that?

11 A. Yes.

12 Q. And I'm going to refer to this as the
13 classifying step, okay?

14 Is it alright if I say that?

15 A. That's fine.

16 Q. Okay. In the classifying step, would you
17 agree that it requires classifying the electronic
18 message as at least one of being able to be responded to
19 automatically or requiring assistance from a human
20 operator?

21 A. Yes.

22 Q. Okay. Now, let's focus on the first one,
23 classifying electronic message as at least one of being
24 able to be responded to automatically.

25 On that one, what that's describing is the

1 system has to classify: Can I respond to it
2 automatically or not?

3 Do you agree with that?

4 A. What is the electronic message, I agree with
5 you.

6 Q. Right. So on this first (i), the
7 classification is looking at the electronic message and
8 asking the question: Can I respond to that
9 automatically or not?

10 Do you agree with me there?

11 A. Yes.

12 MR. VERHOEVEN: Let's go to DX Demo 19,
13 please.

14 That's not the right one, Ryan.

15 This one here (indicates).

16 Q. (By Mr. Verhoeven) Before -- you have seen
17 this illustration before, correct?

18 A. I saw it during your opening, and I made
19 reference to it during my direct testimony.

20 Q. Okay. Now, in our illustration, this is the
21 person sitting there typing a search query.

22 Do you remember that from my opening?

23 A. I believe so.

24 Q. Okay. And then that goes to the Google
25 system, right?

1 A. To the Google web server, or GWS.

2 Q. Right. And then it splits into two parts,
3 right?

4 A. Yes.

5 Q. But the same electronic message that's
6 analyzed up here is down here, right?

7 A. I really haven't focused for my work here on
8 the search system, but I believe that's correct.

9 Q. Okay. So the query is looked at against
10 Google's database and web pages, right?

11 A. Yes.

12 Q. And then the end result is a response, right?

13 A. Yes.

14 Q. Okay. And isn't it true, sir, that 100
15 percent of the time there is always a response?

16 A. There's -- they always provide a search
17 result, yes.

18 Q. 100 percent of the time?

19 A. Yes.

20 Q. Okay. So Google never asks the question, can
21 I respond to that query automatically or not, because
22 100 percent of the time they provide back a search
23 result in response to the search query, true?

24 A. With respect to the search path, that's
25 correct.

1 Q. Okay. Now, you -- when you testified about
2 this step being met, Dr. Rhyne, you focused on this part
3 of the system (indicates), right?

4 A. That's where I --

5 Q. Correct?

6 A. -- focused the entirety of my infringement
7 analysis on, yes, sir.

8 Q. But this -- these native responses are
9 responses to the search query, aren't they?

10 A. In a different part of the system, yes, sir.

11 Q. But they're responses to the search query,
12 right?

13 A. I just agreed with you. Yes, sir.

14 Q. And the Google system never asks a question in
15 regard to those responses, can I respond automatically
16 or not, does it?

17 A. I'm not aware that it does.

18 Q. Okay. So there's a search --

19 A. Let me correct that.

20 I've actually entered some searches from time
21 to time where it says I have no results for that at all.

22 Q. And that's a response, too?

23 A. Well, it's a response that says I don't have
24 any response.

25 Q. And it's an automatic response?

1 A. I assume it's produced automatically.

2 Q. It goes to the user automatically, right?

3 A. It says I don't have anything to give you.

4 Q. There's never a single instance ever in the
5 Google system where a user types a search query and
6 doesn't get back an automatic response, is there, sir?

7 A. They will get something back, yes, sir.

8 Q. So you agree with me?

9 A. Yes.

10 Q. Okay. Now, when you were focusing on this
11 part of the system, you talked about deciding whether or
12 not an advertisement will be returned, right?

13 A. Yes.

14 Q. But that doesn't address the fact that these
15 search results are returned 100 percent of the time,
16 does it?

17 A. I haven't dealt in my infringement analysis
18 with the native search results in any way.

19 Q. Would you agree with me, if you have a system
20 that provides a response 100 percent of the time
21 automatically, that that system does not have a
22 classifying step to decide whether or not to respond
23 automatically?

24 A. Not with respect to the ads part of that
25 system, but for the other part of the system, I've

1 already agreed with you.

2 Q. Now, when you testified about your evidentiary
3 basis for this first part of the classifying step being
4 met --

5 A. Yes.

6 Q. -- Mr. Fenster showed you -- I'm going to try
7 to work this. I hope I don't mess it up.

8 Is that upside down?

9 A. Sideways.

10 Q. Sideways?

11 A. There you go.

12 Q. Is that right?

13 A. Yes, sir.

14 Q. Now, I've highlighted -- I'm just going to
15 walk over here, if that's okay.

16 A. Sure.

17 Q. I have underlined something I think you relied
18 on yesterday.

19 Can you see that?

20 A. Yes.

21 Q. Kind of hard to read?

22 A. I can see it.

23 Q. And this is a Google document, right?

24 A. It's what I call the Gilbert document, but,
25 yes, sir.

1 Q. Uh-huh. And it says, quote: If GWS -- GWS
2 was that server at Google that we looked at, right?

3 A. Google Web Server.

4 Q. Right. So if GWS gets search results before
5 it gets ads to go with them, it only waits 800 ms.

6 What does that mean?

7 A. That's eight-tenths of a second, 800
8 milliseconds.

9 Q. 800 milliseconds.

10 So if Google GWS -- I'm just going to call
11 that the Google server.

12 Is that okay, for shorthand?

13 A. I think Google calls it GWS.

14 Q. Okay. I'll call it GWS.

15 Are you more comfortable with that?

16 A. Actually, I call it GWS, but it doesn't
17 matter.

18 Q. All right. We'll call it GWS.

19 A. All right.

20 Q. If GWS gets such results before it gets ads to
21 go with them, it only waits 800 milliseconds before
22 giving up. If ads don't appear by then, GWS only
23 displays the search results.

24 Do you see that?

25 A. Yes.

1 Q. Now, you relied on that, right?

2 A. On that quote, yeah.

3 Q. And that is -- I have the actual document
4 here. This is Defendants' -- this is Exhibit 401,
5 Plaintiff's Exhibit 401.

6 And can you see that's the document here?

7 A. I'm having a little trouble seeing that. If
8 you could zoom down just a little bit.

9 Q. If I can work this.

10 A. That's fine.

11 Q. So here is the AdServer returns the selected
12 ads to GWS or to the content AdMixer.

13 And this is where it appeared in the Google
14 document, right?

15 A. It appears that I did quote it correctly.

16 Q. Yeah. If GWS gets search results before it
17 gets ads to go with them, it only waits 800 milliseconds
18 before giving up. If the ads don't appear by then, GWS
19 only displays search results.

20 Do you see that?

21 A. Yes.

22 Q. So what that's saying is the Google system is
23 only going to wait for ads for less than a second, 800
24 milliseconds, right?

25 A. Yes.

1 Q. And if it doesn't get them, it responds
2 automatically, right?

3 A. It will send back the search results
4 automatically.

5 Q. So it may wait for the ad, but if they don't
6 come in time, it always is responding automatically,
7 isn't it, sir?

8 A. The first part of your question I don't agree
9 with. It may wait for the ads. It will --

10 Q. It will wait 800 milliseconds?

11 A. If it doesn't get any ads in 800 milliseconds.
12 But if it gets ads before that, it will go ahead and
13 send the ads back with the response.

14 Q. 800 milliseconds is not very long, right?

15 A. It's eight-tenths of a second.

16 Q. Right. And it always, then, brings back the
17 ads automatically, right? Or the search results
18 automatically, right?

19 A. Yes.

20 Q. And if the ads come in that short period of
21 time, it serves those up automatically, right?

22 A. If it can find any ads, it will pick some ads
23 and send them back along with the search results
24 automatically.

25 Q. And there's no human intervention during this

1 very short period of time, is there, sir?

2 A. No.

3 Q. It's entirely automatic, isn't it?

4 A. I believe that's correct, to the best of my
5 current knowledge.

6 Q. Now, the second part --

7 MR. VERHOEVEN: Could you go back, Ryan,
8 to DX Demo 32?

9 Oh, I'm sorry.

10 Q. (By Mr. Verhoeven) The second part of the
11 classifying step is whether or not the electronic
12 message requires the assistance of a human operator,
13 right?

14 A. It's whether or not it would be classified as
15 requiring assistance, is the full language.

16 Q. Right. And so the way you read this
17 classifying step is, in order to infringe this, the
18 Google system would have to do at least one of these two
19 types of classifications, right?

20 A. Yes.

21 Q. We covered the first one, which was whether it
22 can respond automatically or not just now, right?

23 A. I think you did.

24 Q. So talking about the second one, classifying
25 whether or not the message requires assistance from a

1 human operator, I want to ask you a couple of questions
2 about that.

3 Are you ready?

4 A. Sure.

5 Q. Okay. Isn't it correct, sir, that the Google
6 system, after receiving the search query and before
7 returning the response, never classifies that search
8 query as requiring assistance from a human operator?

9 A. Yes.

10 Q. Never does that, does it?

11 A. Not during that time.

12 Q. Okay. So during that time period, this
13 element is not met, is it?

14 A. Not during that time interval.

15 Q. During that time interval, it's not met
16 literally, right?

17 A. Literally.

18 Q. And it's met turned under the Doctrine of
19 Equivalents, is it?

20 A. I didn't address that time interval from the
21 Doctrine of Equivalents in my report, but I will agree
22 with you.

23 Q. Okay. Now, on your direct testimony, you
24 pointed to spam, I believe, as meeting that element?

25 A. Impression spam.

1 Q. But Google -- when Google looks at the spam
2 issue, that's not before a response to the query, is it?

3 A. I think I agree with what you said.

4 It sounds like -- I think that's the same
5 question you just asked me. They don't -- they don't
6 look -- well, they do have an online spam system, but I
7 didn't point to that. I pointed to what they call an
8 offline spam system -- spam system which occurs later.

9 Q. That's offline?

10 A. Yes, sir.

11 Q. Not part of the automatic process of
12 responding to search queries, is it?

13 A. It doesn't occur during that period between
14 when the source sends in the message and they get their
15 response back.

16 MR. VERHOEVEN: All right. Let's go to
17 DX Demo 36.

18 Again, that's not the right one, Ryan.

19 Maybe it is.

20 I apologize, Your Honor.

21 THE COURT: That's alright.

22 MR. VERHOEVEN: If you will bear with me,
23 Your Honor, I have a little mechanical difficulty with
24 this.

25 THE COURT: Take the time you need.

1 Q. (By Mr. Verhoeven) What I would like to
2 address, Dr. Rhyne -- and I don't have a demonstrative
3 to make it easy to see, and I apologize for that.

4 A. Don't worry about it.

5 Q. You remember testifying about Claim 30 on
6 direct?

7 A. Yes.

8 Q. Do you remember that?

9 And there's an Element (b6) in Claim 30?

10 A. Scoring element.

11 Q. And I'll just grab the patent here, Dr. Rhyne,
12 and put it up so that the jury and you can see it.
13 I apologize. This is my copy. It's highlighted, so
14 ignore the highlighting.

15 A. I'm not sure I can do that, but I don't feel
16 it will affect our discussion.

17 Q. All right. Do you see (b6) up there, sir?

18 A. Yes, sir.

19 Q. So I just want to focus on this language:
20 Assigning a score to each stored case model, which is
21 compared with the case model.

22 Do you see that language, sir?

23 A. Yes.

24 Q. Now, all of the claims in this case,
25 Claims 30, 31, and 33, require that this scoring step be

1 met, right?

2 A. Because of the dependency, that's correct.

3 Q. Right. So if this isn't met, you'd agree with
4 me there's no infringement of any of those claims,
5 right?

6 A. Yes.

7 Q. And I forgot to ask that question about the
8 classifying steps.

9 Same is true there: All of Claims 30, 31, and
10 33, the asserted claims, require the classifying step,
11 right?

12 A. Yes.

13 Q. So if the jury concludes that the class --
14 there isn't a classification between automatic or
15 non-automatic and that step is not met, then none of
16 those claims would be infringed, right?

17 A. Well, there are two parts. You only talked
18 about --

19 Q. That's correct.

20 So let me rephrase the question.

21 So if the jury decides the classifying step,
22 both parts of it, aren't met, then none of the claims
23 would be infringed?

24 A. I believe that's correct.

25 Q. Is that a fair statement?

1 A. I'm sorry. I thought you were through.

2 Yes, that's a fair statement.

3 Q. Okay. So going back to 30(b6), is it your
4 understanding that in AdWords, millions, if not
5 billions, of ads are stored?

6 A. I've heard that statement. I don't disagree
7 with that. And based on what I've seen in the way of
8 ads, that's probably correct.

9 Q. And it's true, isn't it, Dr. Rhyne, that not
10 all of those ads are scored, are they?

11 A. Yes.

12 Q. You agree with me?

13 A. Yes.

14 Q. Okay. Now, you gave some testimony about
15 AdMixer.

16 Do you remember that?

17 A. Yes.

18 Q. AdMixer is part of the AdWords process?

19 A. Yes.

20 Q. And the purpose of AdMixer is to develop an
21 initial set of candidate ads, right?

22 A. Yes.

23 Q. And AdMixer does this, according to you, to
24 narrow down the ads in the candidate set, right?

25 A. Yes. To make the candidate set by narrowing

1 down out of those, as you said, billions of ads.

2 Q. All right. And isn't it true, Dr. Rhyne,
3 that -- AdMixer does not score any ads, does it?

4 A. I don't believe that it does. If it does, I
5 have not relied on that as part of my infringement
6 analysis.

7 Q. Okay. So AdMixer doesn't score any ads, yes?

8 A. I don't think that it does.

9 Q. Okay. But you would agree with me that
10 AdMixer is part of the process of returning ads in
11 response to a query, correct?

12 A. From an overall point of view, that's correct.

13 Q. Now, it's true, isn't it, Dr. Rhyne, that as
14 part of the process of returning add in response to a
15 query in AdWords, there are ads that are compared to the
16 incoming -- incoming query that are not scored?

17 A. I -- I need to know a little more about
18 what you're -- I think I know what you're talking about.

19 Q. Let me repeat the question.

20 A. I understand the question.

21 Q. And I'd like you to answer it yes or no.

22 A. Okay.

23 Q. Isn't it true, Dr. Rhyne, as part of the
24 process of returning ads in response to a query in
25 AdWords, there are ads that are compared to the incoming

1 query that are not stored (sic)?

2 A. I believe that that's true in a part of the
3 system.

4 Q. And in the process in which ads are returned
5 to end users, you agree there are ads that are compared
6 to the incoming queries that are not stored (sic),
7 right, sir?

8 A. I think you misspoke.

9 Q. Did I say stored?

10 A. (No response.)

11 Q. Did I say stored, Dr. Rhyne?

12 I apologize.

13 A. That's what I heard, but I'm getting kind of
14 old.

15 Q. Let me get a correct record, okay?

16 A. Okay.

17 Q. Isn't it true, Dr. Rhyne, as part of the
18 process of returning ads in response to a query in
19 AdWords, there are ads that are compared to the incoming
20 query that are not scored?

21 A. Yes.

22 Q. That's true, right?

23 A. I believe that's true in AdMixer.

24 Q. Okay. Now, let's go on to Claim 31.

25 MR. VERHOEVEN: If we could go to DX Demo

1 -- I'm going to have to push the button again. Just one
2 second. This is DX Demo 58 for the record.

3 Q. (By Mr. Verhoeven) And I'd like to switch
4 subjects to Claim 31, Dr. Rhyne.

5 Are you with me?

6 A. Yes.

7 Q. So here we've put Claim 31 here on the
8 left-hand side, and I'd like to focus on this
9 highlighted element.

10 Now, when we were looking at Claim 30 -- well,
11 let me withdraw that question.

12 So this -- this element says: When at least
13 some of the attributes and the text does not match the
14 stored case model, the score is decreased by a
15 predetermined mismatch-weight.

16 Do you see that?

17 A. Yes.

18 Q. And just for reference, immediately preceding
19 the element, it says: When at least some of the -- at
20 least one of the attributes and the text match the
21 stored case model, the score is increased by a
22 predetermined match-weight.

23 Do you see that?

24 A. Yes.

25 Q. So when there is a match, the scores increase;

1 and when there is not a match, the score is decreased;
2 fair?

3 A. Yes.

4 Q. Okay. And the Court's construction of
5 decrease is, quote, a predetermined factor which
6 arithmetically decreases a stored case model's match
7 score when a feature from the stored case model does not
8 match text and attributes from the presented case model.

9 Do you see that?

10 A. I think you misspoke. That's not a
11 construction of the single word, decrease.

12 Q. Okay. What's your understanding of it?

13 A. I believe that's a construction of the
14 three-word phrase, predetermined mismatch-weight.

15 Q. So if there's a predetermined mismatch-weight,
16 what the Judge is saying is, there's -- you have to
17 arithmetically decrease a stored case model's match
18 score, right?

19 A. Yes.

20 Q. Okay. So you need -- what we need to do here
21 in this claim is to decrease the score, right?

22 A. Arithmetically decrease it, yes, sir.

23 Q. Okay. Now, both Claims 31 and 33 require this
24 step, correct, sir?

25 A. Yes.

1 Q. So if the jury were to conclude that the
2 Plaintiff has not met its burden of showing that this
3 element is met, then they must find non-infringement as
4 to these two claims, right?

5 A. As to Claims 31 and 33, yes, sir.

6 Q. Okay. Now, in your testimony about whether
7 this element is met or not, you focused on two
8 multipliers, correct?

9 A. I don't know it was two. I don't know why you
10 said two.

11 Q. Well, you focused on multipliers.

12 A. The odds multipliers. There's a whole set f
13 them.

14 Q. Odds multipliers.

15 A. I think around 32.

16 Q. And those odds multipliers multiply, right?
17 Yes?

18 A. Okay. Yes.

19 Q. Okay.

20 A. They are used as multiplicands in a multiply
21 operation.

22 Q. Okay. And it's your opinion that if there's a
23 mismatch, there's a lower multiplier; and if there's a
24 match, there's a higher multiplier, right?

25 A. Yes.

1 Q. Okay.

2 MR. VERHOEVEN: Let's go to DX Demo 198.

3 Q. (By Mr. Verhoeven) So if you have a score
4 that's 40 and you have a match, you would use a
5 multiplier, right?

6 Do you see this where this is illustrated at;
7 1.5 is the multiplication?

8 A. What I don't understand is where you got the
9 original score of 40.

10 Q. This is an example, sir, that I've created.
11 So can you assume you've got a score of 40?

12 A. But the score is produced by multiplying all
13 the odds multipliers together. So I don't understand
14 where you got the score 40 before you multiplied by
15 this -- what I believe you must mean another multiplier.
16 I'm sorry.

17 Q. You know the claim talks about a score being
18 increased and a score being decreased?

19 A. Yes.

20 Q. Are you saying there's no score against
21 increase or decrease in the Google system?

22 A. No. I'm saying that chart doesn't reflect the
23 way the Google system works. If it's an abstract chart
24 unrelated to Google, then I can follow you, I think.

25 Q. All right. Let's do that then just to move

1 along then, okay?

2 Let's say you have the score of 40.

3 A. That you've previously produced. Okay.

4 Q. All right. And if you have a match, you use a
5 higher multiplier, 1.5.

6 Are you with me?

7 A. Sort of. I mean --

8 Q. Okay. You see there's a multiplication symbol
9 in the --

10 A. I can follow the math.

11 Q. Okay. So you have a higher multiplier, if
12 there's a match. If you get a mismatch, there's a lower
13 multiplier, right?

14 A. Okay.

15 Q. And so you get a lower score.

16 Your testimony is that upon a finding of a
17 lower multiplier, it's the same thing as arithmetically
18 decreasing?

19 A. In the Google system, there is no score
20 produced before you'd multiply all the multipliers
21 together, okay?

22 So you don't have a 40 over here. You have
23 this list of all these multipliers, and you produce one
24 score, and in the process of multiplying all the odds --

25 THE COURT: Well --

1 THE WITNESS: I understand.

2 THE COURT: -- just -- without regard to
3 the Google system, using his chart hypothetically, what
4 would be your answer?

5 Q. (By Mr. Verhoeven) Is it your testimony this
6 is a subtraction?

7 A. No.

8 Q. Okay. This is multiplication, right?

9 A. Yes.

10 Q. And it's an increase in the score, isn't it?

11 A. In that sense, for whatever that is --

12 Q. When you apply a multiplier, you're not
13 subtracting, are you?

14 A. I haven't said anything about subtracting.

15 Q. Okay. You haven't said anything about
16 subtraction.

17 A. No.

18 Q. Not in your direct testimony or in your
19 evidence against Google.

20 A. Not for Google.

21 Q. Okay. All you've pointed to is multipliers,
22 right?

23 A. Yes.

24 Q. And it's your testimony that the decrease is
25 met simply by a lower multiplier being used than when it

1 increased, right?

2 A. Yes.

3 Q. And according to you, that is -- well,
4 according to you, that's not subtraction, is it?

5 A. I've never referred to subtraction with
6 respect to Google.

7 Q. But you claim that a multiplier is an
8 arithmetic decrease?

9 A. If you multiply by 1.2 --

10 Q. Is that your testimony? Yes or no, is it
11 arithmetic -- is a multiplier an arithmetic decrease?

12 A. It can result in an arithmetic decrease.

13 Q. It can result in one?

14 A. Yes.

15 Q. Okay. But is it one?

16 A. It causes one. I --

17 Q. Is a multiplier an arithmetic decrease?

18 A. I don't know how to answer that.

19 Q. It isn't, is it?

20 A. It doesn't cause -- in and of itself, it's
21 just a number.

22 THE COURT: Well, are there ways of
23 arithmetically decreasing the score, other than through
24 subtraction?

25 THE WITNESS: Yes. You can multiply it

1 by a smaller number.

2 THE COURT: Smaller than 1?

3 THE WITNESS: Well, you can multiply --
4 in computing the overall score, which involves a
5 sequence of multipliers, Your Honor, if one of those
6 multipliers is changed to be smaller than it would have
7 been otherwise, the overall score will be smaller.

8 In other words, if I'm computing a score
9 and one of the products in that score is $1-1/2$, then if
10 I come back and take everything the same and multiply by
11 1.2, the end number that I'm going to produce will be
12 smaller because I multiplied in that sequence of
13 multiplications by 1.2 instead of 1.5.

14 THE COURT: All right. Move on.

15 Q. (By Mr. Verhoeven) Let's go to the next
16 subject, Dr. Rhyne. Let's go to Claim 33.

17 MR. VERHOEVEN: If we can put up DX60,
18 please.

19 Q. (By Mr. Verhoeven) If you'll take a second to
20 look at that.

21 A. (Complies.)

22 Q. Is that Claim 33 that's up there, sir?

23 A. Yes.

24 Q. I'd like to focus on the highlighted language
25 in this element.

1 It says -- 33 says: The method of Claim 31
2 wherein each score is normalized by dividing the score
3 by a maximum possible score for the stored case model.

4 Do you see that?

5 A. Yes.

6 Q. Very specific, what it says has to be done,
7 right?

8 A. Yes.

9 Q. And I believe the Court's claim construction
10 that's relevant to this term is, quote: Wherein each
11 match score is divided by the maximum possible score for
12 the stored case model, right?

13 A. Yes.

14 Q. Now, you haven't identified any specific place
15 or algorithm in the Google code where Google divides a
16 score by a maximum possible score, have you?

17 A. I don't think I agree with that.

18 Q. Isn't it true that your testimony is that
19 Claim 33 only requires the same result as division?

20 A. That's part of my testimony.

21 Q. Okay. Well, let's look at what you showed to
22 the jury on your direct examination.

23 MR. VERHOEVEN: Can we put up DX Demo 60?
24 Well, I'm sorry. Could you show, Ryan, Slide 97? There
25 we go.

1 Q. (By Mr. Verhoeven) This is what was up
2 yesterday; is that right?

3 A. I believe so.

4 Q. Okay. And is this what you point to as
5 meeting the step of dividing by the maximum possible
6 score?

7 A. Yes.

8 Q. Okay. Now, is it your testimony that the
9 maximum score you can get in Google is 1?

10 A. The maximum probability, if you express the
11 score as a probability, is 1. If you express it as
12 odds, it's 1 plus the odds.

13 Q. So the maximum probability is 1. The highest
14 thing you could get is 1. That's an exact match, right?

15 A. Yes.

16 Q. Now, isn't it a fact that the maximum possible
17 clickthrough rate is 1? Is that right?

18 A. The maximum clickthrough rate expressed as a
19 probability is 1.

20 Q. And that would correspond to a 100 percent
21 chance of some user clicking on the ad?

22 A. It would be an ad so compelling that if I ever
23 showed it to you, you would click on it, yes, sir.

24 Q. And you can't have a 150 percent chance of
25 clicking on that ad, can you?

1 A. No, sir.

2 Q. But isn't it true that 1 plus odds, which you
3 have in this formula, will almost always be greater than
4 1?

5 A. Yes.

6 Q. So it's greater than this maximum possibility,
7 isn't it, sir?

8 A. That -- that's when you're talking about the
9 odds multiplier side of the coin and not the probability
10 side.

11 Q. It's greater than the maximum possibility,
12 isn't it? It's greater than 1, isn't it?

13 A. I'm sorry. That's several questions in a row,
14 and I'm not sure --

15 Q. It's greater than 1, isn't it, sir?

16 A. What's the it?

17 Q. The 1 plus odds that you have right here
18 (indicates), sir.

19 A. That will be greater than 1.

20 Q. Okay. So in that scenario, you're dividing by
21 greater than 1, aren't you?

22 A. When you're converting the odds multiplier to
23 a probability, yes, you are.

24 Q. And you're dividing by something that's
25 greater than the maximum possible clickthrough rate,

1 correct?

2 A. Yes, you are.

3 Q. Okay. Now, you stated that the result of this
4 division is that the system can compare and rank ads so
5 that the highest ranking ads will be displayed, right?

6 A. That's the goal of what they're trying to do.

7 Q. But isn't it a fact, sir, that AdWords does
8 not rank ads by the predicted clickthrough rate?

9 A. That's part of what they ultimately use. They
10 add the bidding process to it as well.

11 Q. Isn't it correct, sir, that ad rank does not
12 rank ads by the predicted clickthrough rate?

13 A. I don't know what you meant by ad rank.

14 Q. You don't know what that means, ad rank?

15 A. You used it in the first part of your
16 question.

17 Q. Is it correct, Dr. Rhyne, that AdWords does
18 not rank ads by the predicted clickthrough rate? Yes or
19 no.

20 A. It's my understanding that they do as part of
21 the overall --

22 Q. Okay. That's your understanding?

23 A. Yes, sir.

24 Q. Okay. Isn't it true that AdWords does not
25 rank ads by what you have identified as the normalized

1 score?

2 A. I don't -- I don't agree with that.

3 Q. You don't agree with that.

4 A. To my current understanding, that --

5 Q. I'm sorry. Ad rank -- or excuse me -- AdWords
6 ranks ads using an auction, doesn't it, sir?

7 A. Ultimately, they do that.

8 Q. Advertisers bid an amount of money they're
9 going to pay for the ads, right?

10 A. They do.

11 Q. And the Google system compares those bids and
12 ranks the ads based on those bids, doesn't it, sir?

13 A. They -- that's part of what they use in the
14 ultimate ranking.

15 Q. And as part of that auction, Google looks up
16 the advertiser's maximum cost per click, right?

17 A. Yes.

18 Q. And that's the bid, right?

19 A. If you'll just give me a minute to answer your
20 question, I'll try.

21 Q. That's the bid, right?

22 A. That's the bid that they've made on a click
23 for their ad, yes, sir.

24 Q. Now, in this element as well --

25 MR. VERHOEVEN: If we could go back to

1 the slide.

2 Q. (By Mr. Verhoeven) On 33 here, similar to the
3 other elements, if the jury were to find that the
4 Plaintiff didn't meet its burden of showing this
5 division, dividing by the maximum -- wherein each match
6 score is divided by the maximum possible score, if that
7 math isn't in there, they say, well, that math is not
8 there; I don't find it, then -- and that consequently,
9 this element isn't met, then they must find
10 non-infringement of this element, right?

11 A. If they find that it's not met either
12 literally or under the Doctrine of Equivalents, I agree
13 with you.

14 Q. Okay.

15 MR. VERHOEVEN: Now, let's go to DX Demo
16 28, please.

17 Q. (By Mr. Verhoeven) And this is Claim 26,
18 Dr. Rhyne, and I'm focusing on Element (b), which says:
19 Interpreting the electronic message using a rule base
20 and case base knowledge engine.

21 Do you see that?

22 A. Yes.

23 Q. And I'd like to focus on the part of it that
24 talks about a case base knowledge engine, okay?

25 A. Okay.

1 Q. So that's why I've just pulled out that
2 language up here.

3 And then there's a construction that relates
4 to that, right?

5 A. Yes.

6 Q. And I'll just read it. It says, quote: A
7 knowledge engine that processes electronic messages by
8 comparing them to a set -- excuse me -- by comparing
9 them to a stored set of exemplar cases.

10 That's the Court's construction, right?

11 A. Yes.

12 Q. Now, on this step, if the jury were to find
13 that the Plaintiff didn't meet its burden of proving
14 that this is -- that Google -- that there's evidence
15 that practices this, what would be the effect?

16 A. All of the claims that I've been asserting,
17 30, 31, and 33, would not be infringed.

18 Q. Okay. So all of their asserted claims would
19 not be infringed unless the Plaintiff can prove that
20 this element is met, right?

21 A. Yes.

22 Q. Yes? Okay.

23 MR. VERHOEVEN: Let's go -- I'd like to
24 put up DX Demo 29.

25 Q. (By Mr. Verhoeven) Now, this is a pullout from

1 Figure 1 of the patent. Do you agree with me there?

2 We put highlighting on it and some other
3 stuff, but the box here (indicates) --

4 A. Yes.

5 Q. -- this is the pullout from this page of the
6 patent. Would you agree with me there?

7 A. Yes, sir, I do.

8 Q. And this is just an example from the patent,
9 right?

10 A. This is part of what they refer to as the
11 preferred embodiment.

12 Q. Right. And in the preferred embodiment, would
13 you agree what I've highlighted here (indicates) is
14 where they're illustrating this step in this example
15 that we're talking about here?

16 A. I think it illustrates more than that, but
17 that would be something that was intended, in part, to
18 illustrate that step.

19 Q. You see here where it says case base
20 (indicates)?

21 A. Yes, sir.

22 Q. And then here it says presented case model
23 (indicates).

24 Do you see that?

25 A. Yes.

1 Q. And would you agree -- we added this
2 (indicates). This isn't on the picture. It says:
3 Non-interactive message.

4 Would you agree that's a fair addition there
5 to illustrate what we're talking about there?

6 A. I would have put electronic message, but other
7 than that, I think it's -- that's what, I believe -- if
8 I compare the claims to the preferred embodiment, that
9 would be the non-interactive electronic message coming
10 in.

11 Q. So in this example, they're calling it
12 presented case model, right?

13 A. Yes.

14 Q. And then there's this little picture, and in
15 this particular example, they're using e-mail; is that
16 right?

17 A. Yes, sir.

18 Q. Okay. And then would you agree that they're
19 comparing it to the stored case models in the example?

20 A. I think the example is -- that figure is much
21 more than that, but if you try to relate that figure to
22 that particular claim limitation, yes. That -- this is
23 illuminative of that.

24 Q. And this says stored case models right there
25 (indicates), right?

1 A. It does.

2 Q. And we used this phrase, exemplar cases,
3 because that comes from the Court's claim construction.
4 You know what I'm referring to with that phrase, right?

5 A. Yes. I don't agree with that, that the stored
6 case models are -- they are not the same. They're --
7 they're related, but they're not the same.

8 Q. You don't think these are exemplar cases in
9 this example?

10 A. They can be, but there are parts of them --
11 there's more to them than just the e-mail.

12 Q. They're parts of the exemplar cases?

13 A. It's the other way around. The exemplar cases
14 are -- can be parts of the stored case models, which
15 include both a previous problem and the previous
16 solution.

17 Q. Okay. And what do you think that these little
18 pictures represent?

19 A. I think they -- they -- iconically, they
20 represent e-mails, but --

21 Q. Okay.

22 A. -- but there's another figure that explains
23 much more in detail what they have.

24 Q. So there's a solution associated with each of
25 these?

1 A. Yes.

2 Q. Is that what you're saying?

3 A. Yes.

4 Q. Okay. So, for example, if there's a close
5 enough match between the presented -- in this example,
6 presented e-mail and the stored e-mails, one of them,
7 and the system says, we can respond to this
8 automatically, then it won't return this exemplar case
9 here; it will return the associated response.

10 Is that what you're saying?

11 A. It will look to what the previous solution was
12 and implement it. It could be a direction like send
13 back a particular responsive e-mail automatically.

14 Q. Okay. So -- but you would agree that in the
15 illustration of the example, what it appears to be doing
16 is taking the non-interactive electronic message,
17 calling it presented case model, and then that gets
18 compared to stored cases with associated solutions, and
19 if there's close enough match, then it responds
20 automatically?

21 A. I think that's the way the preferred
22 embodiment operated.

23 Q. Okay. Now, you've looked through a whole
24 bunch of Google documents, right?

25 A. Yes.

1 Q. And source code?

2 A. Yes.

3 Q. Okay. Is it true that you didn't find a
4 single document that referred to anything in the Google
5 documents as a case model?

6 A. I don't recall doing it, but -- I didn't
7 particularly make that search, but I don't recall seeing
8 that.

9 Q. You can't identify any one, right?

10 A. Unless there's one identified in my report or
11 in that -- among the documents that are shown in Exhibit
12 161A, I don't recall one right now.

13 Q. And is it true, sir, that in all the documents
14 you looked at at Google and all the source code, you
15 didn't find a single document that referred to a case
16 base knowledge engine using those words?

17 A. I don't recall that saying that at all.

18 Q. You don't recall seeing that in any of the
19 documents?

20 A. Sitting here today, I don't. And I don't
21 remember citing it in my report.

22 Q. Okay.

23 MR. VERHOEVEN: Now, if we can to DX Demo
24 20, please.

25 Q. (By Mr. Verhoeven) This is the illustration I

1 used in my opening, and you may remember it.

2 MR. VERHOEVEN: If we could just go
3 to the -- keep going. One more, Ryan. I'm sorry. Go
4 back.

5 Q. (By Mr. Verhoeven) Okay. So this was my
6 attempt to illustrate the AdMixer. You saw that in the
7 opening?

8 A. Yes, sir. I don't remember what you linked to
9 it, but I think I saw this picture.

10 Q. Now, would you agree with me that in the
11 AdMixer, what's happening is, a query -- a search query
12 that was sent by a user is processed against a database
13 of ads?

14 A. Yes.

15 Q. Okay. And isn't it true that at no time in
16 the Google system is a search query processed against
17 exemplar search queries?

18 A. By that, you mean prior search queries that
19 have been retained?

20 Q. We can start with that, if you'd like.

21 A. Well, otherwise, I don't understand your
22 question.

23 Q. Okay. At no time in the Google system is a
24 search query processed against prior search queries.

25 A. I don't agree with that.

1 Q. You don't agree with that.

2 At any time during the period of time in which
3 the user hits enter with a search query and the time the
4 user gets a response, is it your testimony that the
5 Google search -- that that search query is compared
6 against other search queries in the Google system?

7 A. It's compared against exemplar cases.

8 Q. That's not my question. Let me ask it again.
9 I'm focusing on the time between when a user hits
10 send -- types in a query, hits send, and before the time
11 the user gets back the response.

12 You with me?

13 A. It's not -- it's not -- that's why I asked you
14 for clarification. It is -- that query that you show at
15 the top of this slide is not compared against previous
16 queries that have been received by the Google system. I
17 agree with that.

18 Q. Okay. And let me see if I can get a clear
19 record on this.

20 Between the time -- I'm focusing on the time
21 between when a user hits send, after typing a search
22 query, and prior to the time the user sees the results.

23 A. All right.

24 Q. You with me?

25 A. Yes.

1 Q. And during that period of time, very short
2 period of time, right?

3 A. Yes.

4 Q. Less than a second, right?

5 A. Typically.

6 Q. Yeah.

7 During that period of time, at no place in the
8 Google AdWords system is the search query that the user
9 sends compared against search queries in the Google
10 system.

11 A. Not against any previously-received search
12 queries. That's the -- I will agree with that part of
13 your question.

14 Q. Okay. So you will admit that during this time
15 period I'm talking about, at least that search query is
16 never compared against prior search queries?

17 A. I agree with that.

18 Q. Okay.

19 A. To the best of my current understanding.

20 Q. All right. And you think that it is compared
21 with some other type of search queries?

22 A. Yes.

23 Q. What?

24 A. It's compared to the keywords of the ad, which
25 are sort of anticipated queries as the Google AdWords

1 interface tells you to think of those -- those keywords
2 when you assign them to your ad as things that people
3 who will see your ad in the future might have entered as
4 their keywords in their query and would be hot prospects
5 for clicking on your ad.

6 Q. Okay. So your testimony, then, is that this
7 element is met by taking a search query and comparing it
8 to keywords submitted by advertisers?

9 A. Yes.

10 Q. Is that what your testimony is?

11 A. That's only part of it. Also, I looked at the
12 geo targeting and some other attributes of the query.

13 Q. Comparing it against geo targeting is not
14 comparing it against search queries, is it, sir?

15 A. It's comparing an attribute of the query
16 against an attribute that the advertiser specified for
17 their ad.

18 Q. When you say the word search query, are you
19 talking about a query sent in by a user?

20 A. Yes.

21 Q. And it's your testimony that in the Google
22 system, between this timeframe when the user sends the
23 query and the response, that at -- the keywords are
24 search queries sent in by users?

25 A. Boy, I'm -- I can't even follow that question,

1 because there's two kinds of keywords. There's the
2 keywords in the query, and there's the keywords that are
3 assigned by the advertiser. And I don't know which one
4 you're talking about.

5 Q. Search queries are queries sent in by users,
6 right?

7 A. Yes.

8 Q. Okay. But what you're saying is, this step is
9 met if a search query is matched against a keyword
10 submitted by an advertiser.

11 A. Yes.

12 Q. That's your testimony.

13 A. That keyword by that advertiser is an
14 exemplary case, is the language that I'm using.

15 Q. Now, would you agree with me that between the
16 time a user sends the query and the time the user gets
17 the response, that query in the Google system, AdWords
18 system, is never processed against search queries sent
19 in by other users at any time?

20 A. I agree with that.

21 Q. Okay. And you agree that the AdMixer, which
22 is what we're trying to show up here -- this is just my
23 illustration, but -- you would agree with me that the
24 AdMixer does not match search queries -- let me withdraw
25 the question.

1 It's your testimony that the AdMixer does not
2 match a search query against stored search queries,
3 correct?

4 A. Not previously entered queries sent from the
5 user, yes, I agree with that, if that's what you meant
6 in your question.

7 MR. VERHOEVEN: Now, if we could go to
8 the -- Ryan, if we could go on to the SmartAds part of
9 the processing. That's Step No. 3.

10 Q. (By Mr. Verhoeven) I used this in my opening
11 as well, Dr. Rhyne, if you remember this.

12 A. I do remember it.

13 Q. Okay. Now, I want to focus on the SmartAds
14 portion of the processing.

15 A. Okay.

16 Q. You've also accused this portion of meeting
17 this limitation?

18 A. Yes.

19 Q. Okay. And this part of the processing happens
20 after the AdMixer has identified the subset of ads, a
21 couple of hundred maybe?

22 A. The so-called candidate set of ads, yes, sir.

23 Q. And the AdMixer then asks the SmartAd system
24 for predicted clickthrough rates, right?

25 A. Yes.

1 Q. Okay.

2 A. But I don't understand your picture at all.

3 Q. Okay. Well, let me just ask some questions.

4 A. Okay.

5 Q. The SmartAd system does, in fact, calculate
6 predicted clickthrough rates for ads, right?

7 A. I believe so, for the ads that are in that
8 candidate set, yes, sir.

9 Q. Would you agree with me that the SmartAds part
10 of the processing does not compare an incoming search
11 query with a stored search query?

12 A. Not a previously entered stored search query,
13 that's correct.

14 Q. Now, you -- I guess you don't like my picture,
15 but would you agree there's a lookup table involved in
16 the SmartAds system?

17 A. Well, I -- I -- I can't follow that figure at
18 all, because it's got predicted clickthrough rates that
19 are greater than 1, and I don't understand what you may
20 be illustrating there, so...

21 Q. Well, let's take it down then, and -- if it's
22 too confusing for you, and let me ask you the question
23 again.

24 In the SmartAd system, would you agree that it
25 has a lookup table?

1 A. I wouldn't disagree with that. I don't
2 know -- recall focusing on the lookup table aspect of
3 it. You would have to be more specific as to what
4 you're pointing to as the lookup table.

5 Q. Do you know what a lookup table is?

6 A. Oh, sure.

7 Q. What is it?

8 A. Oh, I -- it's typically a table that has a
9 couple of columns, and you work your way down one column
10 to look for a match, and if you find a match in that
11 column, then the stuff in the other column -- it would
12 be like a telephone directory. I'm looking for Ryan,
13 and you look across, and there's the address and phone
14 number for -- for me.

15 Q. Two or more numbers considered together that
16 can be an index of some kind, right?

17 A. Say that again, please.

18 Q. Well, let me just move on.

19 You would agree with me that a table lookup
20 would not fall into the rule book of case-based
21 reasoning, wouldn't you?

22 A. I think I gave exactly that answer, that I
23 wouldn't generally think of a table lookup as being a
24 case-base, that -- I think I went on to say I could
25 understand how somebody might relate the two, but that's

1 not something I would immediately relate to.

2 Q. So if that's what the SASS system, SmartAd
3 system, is doing to calculate these predicted
4 clickthrough rates, then that's not case-based
5 reasoning, is it, sir?

6 A. I wouldn't make the decision as to whether
7 it's case-based reasoning along those lines. I would
8 look to see whether it met the Court's construction of a
9 case-based knowledge engine.

10 Q. Sir, if the -- if we prove to the jury, in the
11 SmartAd system, what it's doing is it's taking these
12 candidate ads and applying numbers through a lookup
13 table, that that would not be case-based reasoning.

14 A. I don't agree with that.

15 Q. You disagree with that.

16 A. Uh-huh.

17 Q. So applying numbers from a table, that's
18 case-based reasoning, too?

19 A. Not automatically. I think I would look, as I
20 did, carefully at the description and software of the
21 SmartAd Selection System in order to determine whether
22 or not I thought it met the Court's construction of a
23 case-based knowledge engine.

24 Q. So sometimes it is, and sometimes it isn't?

25 A. I think it always is.

1 Q. So anytime you take numbers from a table and
2 apply them to ads, according to you, that's case-based
3 reasoning?

4 A. No.

5 Q. Okay. It's not case-based reasoning.

6 A. It might be. I'd have to look at exactly what
7 it is that they're doing in that process to decide
8 whether it met the Court's construction.

9 Q. Now, according to you, a case or an exemplar
10 case can simply be anything that's used for interpreting
11 a message.

12 A. As -- as far as what I've tried to look for, I
13 believe that's correct.

14 Since I wrote my report and since I gave that
15 testimony, there's been some more clarification from
16 Judge Everingham, and I will always rely on what Judge
17 Everingham said these cases were or weren't.

18 Q. Your testimony, in forming your opinions, was
19 you interpret exemplar cases as being something that
20 could be used for the purpose of interpreting a message.
21 That's it.

22 A. Yes.

23 Q. So that could be anything, couldn't it?

24 A. It could have been until I got some further
25 direction from Judge Everingham, which narrowed me to a

1 couple of things.

2 Q. Well, you formed your opinion based on that
3 assumption, didn't you, sir?

4 A. Originally.

5 Q. Yeah.

6 THE COURT: Counsel, approach.

7 (Bench conference.)

8 THE COURT: Let's limit it to questions
9 of what his opinions currently are, okay? I don't know
10 what -- how to clarify them in response to something
11 that I've done, but --

12 MR. VERHOEVEN: Well, neither do I, Your
13 Honor, and that's the problem.

14 THE COURT: Well, but --

15 MR. VERHOEVEN: It's cross-examination,
16 and I don't want to give him an opening for a narrative.

17 That's the first time I'm hearing this,
18 Your Honor. We took his deposition just last week. We
19 took his deposition just, you know --

20 THE COURT: Okay.

21 MR. VERHOEVEN: -- literally the week
22 before trial.

23 THE COURT: Well, I understand the
24 time --

25 MR. VERHOEVEN: I'll move on.

1 THE COURT: -- but let's --

2 MR. VERHOEVEN: I can move on, Your
3 Honor.

4 THE COURT: Okay. And another thing, Mr.
5 Verhoeven, don't push me with the side-bar comments
6 about being confusing to the witness, okay? So let's
7 avoid any side-bars, okay?

8 MR. VERHOEVEN: Yes, Your Honor.

9 THE COURT: All right.

10 (Bench conference concluded.)

11 Q. (By Mr. Verhoeven) And I may have asked -- I
12 don't think I asked you on this particular claim, the
13 case-based reasoning claim --

14 MR. VERHOEVEN: Which if we could just
15 put up DX Demo 28 again, please.

16 Q. (By Mr. Verhoeven) And if I did ask you about
17 it, I apologize.

18 So this element is not met -- did I ask you
19 about this already?

20 A. You did.

21 Q. I did. Okay. I'm sorry, Dr. Rhyne. I just
22 wanted to establish that if this is met, there's no
23 infringement, right?

24 A. You asked me, and I agreed with you --

25 Q. Okay.

1 A. -- if it's not met either literally or under
2 the Doctrine of Equivalents.

3 Q. All right.

4 MR. VERHOEVEN: So let's go to DX Demo
5 25.

6 Q. (By Mr. Verhoeven) And I'd like to focus on
7 non-interactive.

8 So in Claim 26 is a method for automatically
9 processing a non-interactive electronic message using a
10 computer, and it has three steps, right?

11 A. Yes, sir.

12 Q. And then the first one is receiving the
13 electronic message from a source, and I'm focusing on
14 the part of this that says non-interactive.

15 You with me?

16 A. I think.

17 Q. Okay. And the Court construed that, correct?

18 A. Yes.

19 Q. As, quote, an electronic message in which the
20 sender -- the sender would be -- what is your
21 understanding?

22 A. The person who entered the query using their
23 browser and their computer, yes.

24 Q. That person's computer and their browser?

25 A. Yes, sir, and their internet connection.

1 Q. Okay. So an electronic message in which the
2 sender does not provide any additional information after
3 the message has been received and -- by whom? Who's the
4 message received by?

5 A. By the Google -- in this case --

6 Q. Google --

7 A. -- Google AdWords system.

8 Q. Okay. So what this is -- your understanding
9 of this is, it's saying non-interactive means an
10 electronic message in which the person sitting at the
11 computer does not provide any additional information
12 after the message -- electronic message has been
13 received by Google --

14 A. That's correct.

15 Q. -- is that right?

16 Okay. And here also -- all the claims that
17 are asserted, 30, 31, and 33, depend on this element,
18 right?

19 A. Yes.

20 Q. And so if this element -- if the jury
21 concludes that the Plaintiff hasn't proven that this
22 element is met, in other words, that the message is
23 non-interactive, then they must find non-infringement,
24 correct?

25 A. You misspoke.

1 Q. Let me try it again then.

2 If the jury were to conclude that the
3 Plaintiff hadn't met its burden of proving the existence
4 of this non-interactive electronic message, for example,
5 that it's interactive, then none of those three claims
6 would be infringed, right?

7 A. Correct.

8 Q. And the jury must find non-infringement, if
9 they find there's an absence of proof there, right?

10 A. Yes.

11 Q. Okay.

12 MR. VERHOEVEN: Now, let's put up DX Demo
13 26(a), I believe.

14 Q. (By Mr. Verhoeven) Now, you've used the Google
15 search page a bunch of times in connection with
16 preparing for this case, right?

17 A. More than a bunch.

18 Q. Yeah.

19 A. I use it almost daily, if not daily.

20 Q. So I've got another example I'd like to go
21 through --

22 A. All right.

23 Q. -- okay?

24 So I'm a user, and I'm sitting at my
25 terminal --

1 MR. VERHOEVEN: And let's go to the
2 next...

3 Q. (By Mr. Verhoeven) And I just type in this
4 character M.

5 You see it?

6 A. Yes, uh-huh.

7 Q. Google automatically gives me back ten
8 suggestions, right?

9 A. I think if you set your browser up to do that,
10 it will do that.

11 Q. That's a default, isn't it?

12 A. It must not be, because I don't generally get
13 them on my computer, and I don't -- I don't think I ever
14 went intentionally and stopped doing that. So it may be
15 browser-dependent.

16 I use Internet Explorer. This may be
17 something FireFox does all the time or something. I
18 don't ever see this on my computer.

19 Q. Do you know whether it's a default or not?

20 A. I don't.

21 Q. Okay. Have you seen this happen?

22 A. Yes. Oh, yes.

23 Q. Okay.

24 A. Yes. Yes.

25 Q. This letter M gets sent from the user to

1 Google, doesn't it?

2 A. They actually go ahead and echo it over to
3 Google.

4 Q. And that goes over to Google, doesn't it?

5 A. Yes.

6 Q. That's an electronic message, isn't it?

7 A. It's not the electronic message of the claims.

8 Q. Is this an electronic message, sir?

9 A. No.

10 Q. Is it electronically sent?

11 A. Yes.

12 Q. Is it a message?

13 A. No.

14 Q. M is not a message?

15 A. No.

16 Q. Why not?

17 A. Because there's more to come. It's not a
18 message until you hit Google search.

19 Q. Well, let's go back to the Court's claim
20 construction.

21 There's nothing in here that says that you
22 have to wait until there's more to come, right? It just
23 says electronic message.

24 A. It's got to be a message.

25 Q. Okay. And what -- and how do you understand

1 that, sir?

2 A. That it's got to convey some information that
3 the person who's the sender intends to send to Google to
4 say: I want to search on something.

5 Q. So it's your understanding that in order for
6 something to be a message under this patent, that the
7 user has to intend to be sending a message?

8 A. Yes. There has to be a message, and M, at
9 least in that case, is not the message. If they hit
10 Google search after typing M, then M would be the
11 message. But if it's in the middle of it, it's not.

12 Q. The claim construction doesn't say that the
13 user has to intend it to be a message, does it?

14 A. I was trying to give you a definition of the
15 word message and why I don't think the single letter M
16 in that example is a message.

17 Q. Well, let's just --

18 MR. VERHOEVEN: If we could go back to
19 the next slide, please. Next.

20 Q. (By Mr. Verhoeven) If we assume that that is a
21 message, M is a message, the user -- when the user types
22 that in there --

23 A. Yes.

24 Q. -- it gets sent to Google, doesn't it?

25 A. It does.

1 Q. And what happens in less than a second?

2 Google comes back with all this, right?

3 A. Yes, if you have your browser set up to do
4 that.

5 Q. And then what --

6 MR. VERHOEVEN: Ryan, go to the next one.

7 Q. (By Mr. Verhoeven) The next character that the
8 user types in, another couple of characters gets sent to
9 Google, right?

10 A. I would think only one more character gets
11 sent, but maybe it echoes both of them. I don't know.

12 Q. You don't know.

13 MR. VERHOEVEN: I apologize, Your Honor.

14 Q. (By Mr. Verhoeven) This is electronically
15 transmitted, right?

16 A. Those letters are sent electronically.

17 Q. Okay. But you don't think that's a message?

18 A. I do not.

19 Q. And then Google automatically responds really
20 fast with these suggestions, right?

21 A. Yes.

22 Q. Okay. And then the next character, the same
23 thing happens, right?

24 A. A little different thing happens, but it's the
25 same general concept, that's correct.

1 Q. There's interaction between the client
2 computer that the user's on, and the servers over at
3 Google, right?

4 A. Well, the Google -- the R was sent to Google,
5 and Google did send back those other suggested messages.

6 Q. That's an interaction, isn't it?

7 A. It is.

8 Q. This whole process is interactive, isn't it?

9 A. It has data flowing back and forth. It would
10 certainly be what I would generally characterize as
11 computer-to-computer interaction.

12 Q. You wouldn't call it non-interactive, would
13 you?

14 A. I wouldn't call it non-interactive in the
15 general sense of what's happening between those letters
16 and Google.

17 Q. And then the next character, it changes again
18 with different responses, different suggestions, right?

19 A. It sure does.

20 Q. The next character, again, every single
21 character --

22 MR. VERHOEVEN: Keep going, Ryan.

23 Q. (By Mr. Verhoeven) -- until you're done, it
24 keeps making suggestions, back and forth, back and
25 forth, right?

1 A. Sure does.

2 Q. That's interaction.

3 A. Until you're done is the keyword.

4 Q. Okay. If this were -- if we go back to just
5 putting in the M --

6 A. Uh-huh.

7 Q. -- if that were an electronic message, would
8 you agree that this process doesn't meet the claim?

9 A. Well, that's kind of self-fulfilling prophesy
10 there. I mean, I don't think it is. If I agreed with
11 you -- I can understand what you're saying, but I don't
12 agree with you.

13 Q. Well, just for the sake of argument, let me
14 ask the question.

15 A. Hypothetically.

16 Q. If -- hypothetically. That's a better way to
17 say it.

18 Hypothetically, if the M is an electronic
19 message, this process would not be non-interactive,
20 would it, sir?

21 A. I -- I --

22 Q. Under these elements we just went through.

23 A. If I thought that that M by itself were a
24 message, then I would say that there's some
25 interactivity going on.

1 Q. Okay.

2 (Pause in proceedings.)

3 THE COURT: Are you about to move into a
4 new area?

5 MR. VERHOEVEN: I am, Your Honor.

6 THE COURT: All right. Well, in that
7 case, we're going to take our lunch recess before we get
8 into that.

9 Ladies and Gentlemen, I'll excuse you for
10 lunch at this time. Be back ready to go at 1:15.

11 Remember my prior instructions, and don't
12 talk about the case.

13 Thank y'all.

14 LAW CLERK: All rise.

15 (Jury out.)

16 THE COURT: All right. Be in recess
17 until 1:15.

18 MR. VERHOEVEN: Your Honor?

19 THE COURT: Yes.

20 MR. VERHOEVEN: Housekeeping matter.

21 I've been informed by Ms. Candido that we worked out the
22 document issue on the damages thing, so...

23 THE COURT: Okay. All right. Well, then
24 I'll assume you don't need me -- I'm in chambers usually
25 for lunch during trial. If something comes up over the

1 lunch hour, send a delegation downstairs, and I'll be
2 happy to try to resolve it before we get started, okay?

3 MR. VERHOEVEN: Yes, Your Honor.

4 (Lunch recess.)

5 * * * * *

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8

9 CERTIFICATION

10

11 I HEREBY CERTIFY that the foregoing is a
12 true and correct transcript from the stenographic notes
13 of the proceedings in the above-entitled matter to the
14 best of my ability.

15

16

17

18 /s/_____
SUSAN SIMMONS, CSR
19 Official Court Reporter
State of Texas No.: 267
20 Expiration Date: 12/31/10

Date

21

22

23 /s/_____
JUDITH WERLINGER, CSR
24 Deputy Official Court Reporter
State of Texas No.: 731
25 Expiration Date: 12/31/10

Date